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BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF NORTH CAROLINA

VOLUME 33
1954-56

HARRY McMULLAN*
WILLIAM B. RODMAN, JR.†
ATTORNEY GENERAL

T. W. BRUTON
RALPH MOODY†
CLAUDE L. LOVE
I BEVERLY LAKE†
HARRY W. MCGALLIARD
JOHN HILL PAYLOR
PEYTON B. ABBOTT
SAMUEL BEHREND, JR.
ROBERT E. GILES
Assistant Attorneys General

*Deceased June 23, 1955.

†Resigned.

‡Resigned to accept appointment as Associate Justice of the Supreme Court. Succeeded by George B. Patton, August 21, 1956.

BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF NORTH CAROLINA
LETTER OF TRANSMITTAL

1 January, 1957

To His Excellency

LUTHER H. HODGES, *Governor*

Raleigh, North Carolina

Dear Sir:

In compliance with Article III Section 7 of the Constitution, I herewith submit the report of the Department of Justice for the biennium 1954-1956.

Respectfully yours,

GEORGE B. PATTON,

Attorney General

2872 1954/56

LIST OF ATTORNEYS GENERAL SINCE THE ADOPTION OF CONSTITUTION IN 1776

	<i>Term of Office</i>
Avery, Waightsill	1776-1779
Iredell, James	1779-1782
Moore, Alfred	1782-1790
Haywood, J. John	1791-1794
Baker, Blake	1794-1803
Seawell, Henry	1803-1808
Fitts, Oliver	1808-1810
Miller, William	1810-1810
Burton, Hutchins G.	1810-1816
Drew, William	1816-1825
Taylor, James F.	1825-1828
Jones, Robert H.	1828-1828
Saunders, Romulus M.	1828-1834
Daniel, John R. J.	1834-1840
McQueen, Hugh	1840-1842
Whitaker, Spier	1842-1846
Stanly, Edward	1846-1848
Moore, Bartholomew F.	1848-1851
Eaton, William	1851-1852
Ransom, Matt W.	1852-1855
Batchelor, Joseph B.	1855-1856
Bailey, William H.	1856-1856
Jenkins, William A.	1856-1862
Rogers, Sion H.	1862-1868
Coleman, William M.	1868-1869
Olds, Lewis P.	1869-1870
Shipp, William M.	1870-1872
Hargrove, Tazewell L.	1872-1876
Kenan, Thomas S.	1876-1884
Davidson, Theodore F.	1884-1892
Osborne, Frank I.	1892-1896
Walser, Zeb V.	1896-1900
Douglas, Robert D.	1900-1901
Gilmer, Robert D.	1901-1908
Bickett, T. W.	1909-1916
Manning, James S.	1917-1925
Brummitt, Dennis G.	1925-1935
Seawell, A. A. F.	1935-1938
McMullan, Harry	1938-1955
Rodman, William B., Jr.	1955-1956
Patton, George B.	1956-

This report is dedicated to the memory of the late Harry McMullan who served the State as Attorney General for seventeen years (1938-1955), a period longer than any former incumbent of the office.

Although in failing health for some time prior to his death, Mr. McMullan, impelled by his high sense of duty and devotion to the office he held, insisted, against the advice of his friends and associates, upon shouldering and carrying the many burdens and responsibilities which confronted the office during this critical period. This unselfish and courageous service was unquestionably a major contributing factor to his untimely death.

In the passing of Harry McMullan, the State suffered the loss of an official who was dedicated to a life of unselfish service to the State he loved so well. He was a man learned in the law and was ever zealous of its efficient administration. He was loved and respected by each individual member of his staff; and his friendliness, high character, fearless devotion to duty, and the efficient manner in which he carried out the duties of his high office endeared him to all the people of North Carolina.



HARRY McMULLAN

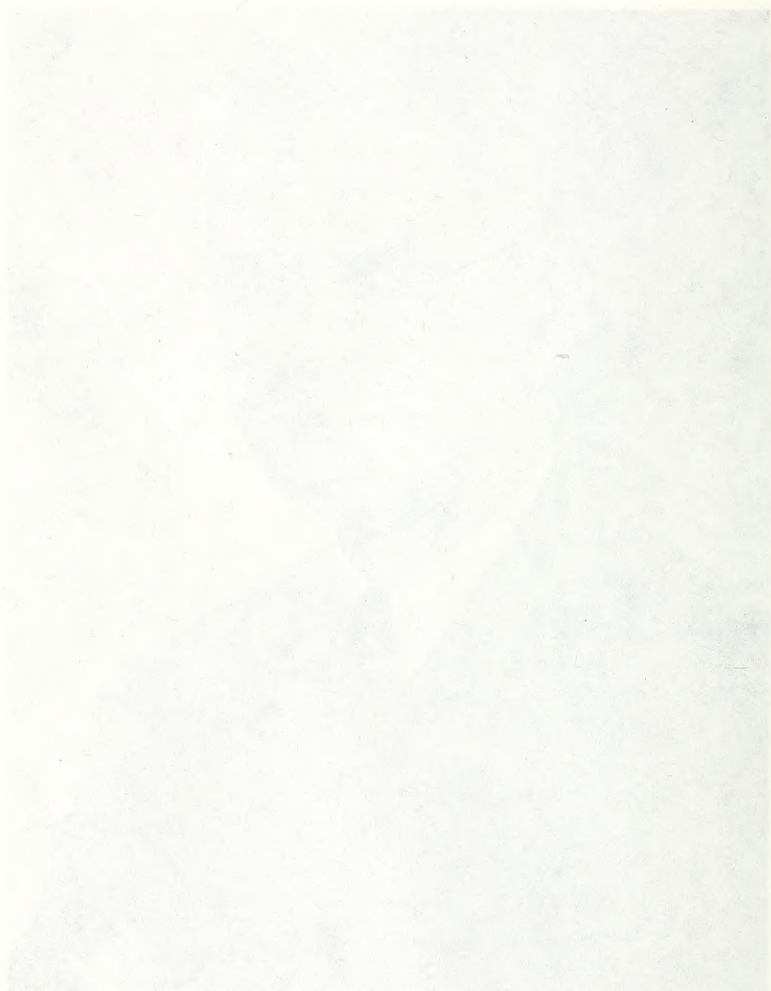


PLATE 100

EXHIBIT I

CIVIL ACTIONS PENDING IN THE COURTS OF NORTH CAROLINA DURING THE BIENNIUM 1954-1956:

PENDING IN THE SUPERIOR COURTS OF NORTH CAROLINA

Asphalt and Petroleum Co. v. G. Allen Ives and State Board of Education.
C. H. Case and Letha Fordrie Rice v. State Board of Education.
Harry T. Davis v. Hazel Hunter Ramsey (State Board of Education).
James T. Dixon and Wife v. Wildlife Resources Comm'n and Dept. Conservation and Development.
G. W. Huntley v. Brady Willis (State Board of Education).
Roland D. Owens v. Theodore S. Meekins.
Frank Roller v. Dan G. Allen, et al.
Salter v. State Board of Education and Highway & Public Works Comm'n.
Jas. v. Scarborough, et al. v. James I. Gray and Wife.
Shingleton v. Wildlife Resources Comm'n and Manning.
In re: W. L. Smallwood—Wildlife Resources Comm'n.
State ex rel State Banking Comm'n v. Proposed Stanly Industrial Bank.
State ex rel State Board of Education v. LeRoy D. Batts (Yow).
University of North Carolina, State College and State of N. C. v. Mrs. Arlesia McDuffie.
Jas. R. Walker, Jr. v. C. D. Moss, et al.
Geo. R. Wallace and Grace W. Taylor, Trustees, v. Evans—State Board of Education.
West Virginia Pulp and Paper Co. v. Basnight, et al.
West Virginia Pulp and Paper Co. v. M. S. Harrell, et al.
West Virginia Pulp and Paper Co. v. Richmond Cedar Works, et al.
H. L. Whitt v. Chas. F. Gold, Insurance Commissioner.
A. & T. College v. F. R. Holliday and Maryland Casualty Co.
Lester Dunlap v. State ABC Board.
Martin Oaksmith v. Rowland McClamrock.
Webster v. Gibbs.
Wayne County and City of Goldsboro v. Goldsboro Gas Company, Shaw, et al.
Lake Forest, Inc. v. Eugene G. Shaw, Commissioner of Revenue.
Luther Meares v. Eugene G. Shaw, Commissioner of Revenue.
Luther Meares v. Eugene G. Shaw, Commissioner of Revenue.
Luther Meares v. Eugene G. Shaw, Commissioner of Revenue.
Swift & Company v. R. A. Chestnut, Shaw et al.
J. Exum & Company v. Eugene G. Shaw, Commissioner of Revenue.
Equipment Finance Company v. Edward Scheidt, Commissioner of Motor Vehicles.

Burroughs Adding Machine Company v. Edwin Gill, Commissioner of Revenue.

Department of Revenue v. S. W. Ellis.

Bristol Mack Distributors v. Department of Motor Vehicles.

ET&WNC v. Eugene G. Shaw, Commissioner of Revenue.

George Rehman Company v. Edward Scheidt, Commissioner of Motor Vehicles.

L. D. Futch v. Edward Scheidt, Commissioner of Motor Vehicles.

Clemmie Dodson v. Edward Scheidt, Commissioner of Motor Vehicles.

Charlie Murry Herron v. Edward Scheidt, Commissioner of Motor Vehicles.

Grant Ford v. Edward Scheidt, Commissioner of Motor Vehicles.

Billie Owen Mangum v. Edward Scheidt, Commissioner of Motor Vehicles.

Buford Leon Thomas v. Edward Scheidt, Commissioner of Motor Vehicles.

Sadie Bowes Jeffries & Frank Jeffries v. Edward Scheidt, Commissioner of Motor Vehicles.

Harry Kahn v. Edward Scheidt, Commissioner of Motor Vehicles.

Gordon Lee Crumpler v. Edward Scheidt, Commissioner of Motor Vehicles.

David B. Thrift v. Edward Scheidt, Commissioner of Motor Vehicles.

Buddy Jones v. Edward Scheidt, Commissioner of Motor Vehicles.

Harry Bost v. Edward Scheidt, Commissioner of Motor Vehicles.

Edwin Beamer v. Edward Scheidt, Commissioner of Motor Vehicles.

Charles A. Woosley v. Edward Scheidt, Commissioner of Motor Vehicles.

Board of Education v. Eugene G. Shaw, Commissioner of Revenue.

Pure Oil Company of the Carolinas v. Maxwell.

Cherokee County and Town of Andrews v. Oran C. Luther et al and Eugene G. Shaw.

New Hanover County v. W. T. Maree, Eugene G. Shaw.

City of Wilmington and New Hanover County v. John Martin and Eugene G. Shaw.

A. Ray Trexler v. Eugene G. Shaw, Commissioner et al.

Mrs. Frances Davis Chance v. State of North Carolina ex rel Commissioner of Revenue et al.

June Hayes v. Eugene G. Shaw, Commissioner of Revenue.

Commissioner of Revenue v. H. H. Stewart.

Eugene G. Shaw v. F. D. Smith.

State of N. C. ex rel N. C. Utilities Commission v. Turner Transfer, Inc.

State of N. C. ex rel Utilities Commission v. Youngblood Truck Lines, Inc., et al.

State of N. C. ex rel Utilities Commission v. City of Kings Mountain, N. C.

State of N. C. ex rel Utilities Commission v. City of Shelby, N. C.

State of N. C. ex rel Utilities Commission v. J. K. Pinnell, John Dawson and Louis Dawson.

State of N. C. ex rel Utilities Commission v. Ben F. Aycock, d/b/a Royal Oaks Water System.

State of N. C. ex rel Utilities Commission v. Peoples Bank and Trust Company, Trustee.

State of N. C. ex rel Utilities Commission v. Durham Telephone Company.

State of N. C. ex rel Utilities Commission v. Asphalt and Petroleum Company.

PENDING IN NORTH CAROLINA SUPREME COURT

State of North Carolina ex rel. Comm'r of Revenue v. D. E. Graham, Jr.

R. L. Brown, et al., Trustees, v. Eliza Jane Doby, et al.

Albert Joyner, et al. v. McDowell County Board of Education.

NAACP v. Thad Eure, Secretary of State.

W. L. Bennett, et al. v. Attorney General.

PENDING BEFORE U. S. COURT OF APPEALS

United States v. T. H. Williams, Shaw, Comm'r of Revenue, et al.

PENDING IN THE UNITED STATES DISTRICT COURT

Joseph Butts, et al. v. Board of Education of Perquimans County.

John Froneberger v. State Supt. Public Instruction.

Alice Hanibal, et al. v. H. P. Taylor, et al.

Wm. H. Johnson, et al. v. State Board of Education.

Leonard Keele, et al. v. H. P. Taylor, et al.

Preston Weaver, et al. v. H. P. Taylor, et al.

CASES PENDING BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION—63

NUMBER OF CASES DISPOSED OF DURING THE BIENNIUM 1954-1956

In the Superior Courts of North Carolina	68
In the Supreme Court of North Carolina	17
In the Supreme Court of the United States	3
In the District Courts of the United States	7
Before the North Carolina Industrial Commission	443

EXHIBIT II

CRIMINAL CASES DISPOSED OF IN THE NORTH CAROLINA SUPREME COURT DURING THE BIENNIUM 1954-1956:

Abandonment-Nonsupport	9
Abortion-Procuring	1
Assault and Battery	4
Assault on Female	5
Assault with Deadly Weapon	6
Assault with Intent to Kill	1
Assault with Intent to Rape	4
Bigamous Cohabitation	2
Breaking-Entering-Larceny-Receiving	13
Carnal Knowledge	1
Conspiracy	2
Crime Against Nature	1
Elopement	1
Fornication and Adultery	1
Gambling	1
Housebreaking	1
Houseburning—Attempt	2
Illegal Fortune Telling	1
Impersonating Officer	1
Incest	1
Injury to Real Property	1
Manslaughter	15
Murder First Degree	3
Murder Second Degree	9
Prostitution—Aiding	4
Resisting Officer	6
Robbery	5
Subornation of Perjury	2
Violating Health Laws	1
Violating Liquor Laws	25
Violating Motor Vehicle Laws	25
Violating Municipal Ordinance	2
Violating Narcotics Act	1
Violating Zoning Ordinance	1
Worthless Check	1
TOTAL	159

Number of cases dismissed on motion during the Biennium 1954-1956	13
Number of Petitions for Writ of Certiorari denied during the Biennium 1954-1956	21
Number of Petitions for Writ of Certiorari allowed during the Biennium 1954-1956	9
Number of Petitions for Writ of Error Coram Nobis denied during the Biennium 1954-1956	2
Number of Petitions for Writ of Habeas Corpus denied during the Biennium 1954-1956	1

FEES TRANSMITTED BY THE ATTORNEY GENERAL TO THE
STATE TREASURER DURING THE BIENNIUM 1954-1956 \$660.00

SUMMARY OF ACTIVITIES

STAFF PERSONNEL

Since the publication of the Biennial Report of 1952-1954, the State sustained the loss, by death, of Attorney General Harry McMullan, who died on the 23rd of June, 1955. The present Attorney General, by appointment of Governor Hodges, succeeded him.

Assistant Attorneys General T. W. Bruton, Claude L. Love, Harry W. McGalliard, and John Hill Paylor served throughout the biennium.

Assistant Attorney General Ralph Moody resigned to accept an appointment by Governor Hodges as a member of the Utilities Commission, and Assistant Attorney General McGalliard was relieved from duties with the Department of Revenue and assigned to the Office of the Attorney General in the Justice Building.

Dr. I. Beverly Lake resigned as Assistant Attorney General to enter the private practice of law, and Peyton B. Abbott, former Assistant Attorney General, was returned by appointment of Attorney General Rodman to succeed him.

Samuel Behrends, Jr., and Robert E. Giles were appointed Assistant Attorneys General to fill vacancies caused by legislative enactment and resignations.

Charles G. Powell, Jr., Revisor of Statutes, resigned to enter the private practice of law, and, upon the resignation of Staff Attorney Gerald F. White, his successor, Bert M. Montague was appointed Revisor of Statutes.

The vacancy caused by the resignation of Max O. Cogburn, as Director of the Division of Legislative Drafting and Codification of Statutes, has not at the present time been filled.

Worth H. Hester, Staff Attorney assigned to duties with the Welfare Department, resigned to enter the private practice of law, and A. L. Bulwinkle was appointed to succeed him.

William P. Mayo, Staff Attorney, resigned to enter the private practice of law, and Harvey W. Marcus and F. Kent Burns were appointed as Staff Attorneys to fill vacancies in these positions.

Miss Lillian Turner, faithful and veteran Budget Officer and Secretary in the office, resigned for retirement from State service as of the first of August, 1956.

The secretarial staff who served during the biennium is as follows: Mrs. Lorraine H. Allers, Miss Elizabeth N. Flournoy, Mrs. T. P. Norwood, Mrs. W. K. Leach, Mrs. Eunice Murphy, Miss Alice Collins, and Mrs. Myrtle K. Pope. Vacancies caused by resignations were filled by the appointment of Mrs. Katharine L. Dowd, Mrs. Lois R. Haswell, Mrs. Elizabeth M. Turner, Mrs. Letty P. Lile, and Mrs. Ethel Burt Kelly.

SUMMARY OF THE CONSTITUTIONAL AND STATUTORY DUTIES OF THE ATTORNEY GENERAL

In the interest of economy, reference is made to former reports of this office for a summary of the constitutional and statutory duties of the Attorney General.

BANKRUPTCIES AND RECEIVERSHIPS

During the biennium members of the staff made numerous appearances in cases of bankruptcy and receivership. These appearances were made primarily to assert claims for taxes owing to the Department of Revenue and the Department of Motor Vehicles. A large increase in the number of these cases was apparent during the biennium.

FINANCIAL RESPONSIBILITY ACT

Under the Motor Vehicle Safety and Financial Responsibility Act of 1953, which became effective as of January 1, 1954, the Commissioner of Motor Vehicles is required to suspend the driver's license of an individual who is involved in an accident resulting in personal or property damage who neither has liability insurance coverage, nor posts security to compensate for the estimated damages caused by the accident. In suspending a driver's license, the Commissioner does not make an evaluation as to negligence or as to whether the licensee did or did not cause the accident. The suspension is based solely on the fact that the licensee did not furnish proof of "financial responsibility." Also, under the 1953 Act, any individual whose driver's license is so suspended can immediately file a petition in the superior court for a hearing on the issue of "probable negligence" in causing the accident, and the filing of such a petition automatically stays the suspension of the driver's license.

From January 1, 1954 through March 1956, more than twenty-one hundred (2,100) such petitions were filed in superior courts throughout North Carolina; and as of March 1956, only a very few of these petitions had been heard and disposed of by the superior court judges. Because of the large number of suspensions of licenses which were required under this law, and the large number of petitions which were subsequently filed, the Attorney General could do no more than file an answer to each petition, setting forth the mandatory requirements of the law, requesting that the judge hear the matter on the merits and requesting that any other person involved in the automobile accident be permitted to come in and offer testimony. It was a physical impossibility for the Attorney General or his representative to be present at the hearing on more than a total of twenty-one hundred (2,100) petitions, with petitions pending in every one of the one hundred counties. In addition, neither the Department of Motor Vehicles nor the Attorney General's office had, or could reasonably obtain, detailed information on the issue of negligence in each of these automobile accidents.

Early in March 1956, steps were taken to speed up the disposition of the many petitions pending on the dockets. Chief Justice M. V. Barnhill requested the judges of the superior courts to have pending petitions placed on the docket and heard. At the same time, the Department of Motor Vehicles, with the advice of the Attorney General's office, revised its procedures so as to furnish with each answer to a petition a photostatic copy of the accident report filed by the investigating police officer or highway patrol-

man. This puts before the judge hearing the petition all the information which was available in the files of the Department of Motor Vehicles.

The cooperation of the superior court judges has brought about, as of July 30th, a very sizable reduction in the number of financial responsibility petitions still pending on the dockets throughout the State, and it is expected that by the end of the present calendar year this situation, from the standpoint of court administration, will be substantially under control. However, the experience under the law as presently written indicates quite strongly the need for some amendment to take care of the problems of court administration which have developed under the present provisions of the Safety-Financial Responsibility Act.

DIGEST OF OPINIONS TO GOVERNOR

NOTARIES; APPOINTMENT AND QUALIFICATION; SEALS

28 March 1956

Under G. S. 10-1, the Governor appoints and commissions a notary public for a specific county.

Under G. S. 10-2, the notary public qualifies for office by taking an oath before the clerk of the superior court of the county for which he is appointed.

Under G. S. 10-6, a notary public has full power and authority to perform the functions of his office in any and all counties of the State, but his seal should bear the name of the county for which he was appointed.

INDIANS; EASTERN BAND OF CHEROKEE INDIANS; CRIMINAL JURISDICTION OF STATE COURTS OVER INDIANS RESIDING IN NORTH CAROLINA

8 July 1955

The courts of the State of North Carolina have criminal jurisdiction over crimes committed on Indian lands and any Indian reservation; the State courts have jurisdiction over civil matters involved with Indians except as to the particular property held in trust for the Eastern Band of Cherokee Indians by the Federal Government.

CRIMINAL PROCEDURE EXTRADITION PROCEEDING; COSTS AND EXPENSES

15 July 1955

Reimbursement for costs of extradition of an alleged felon from another state to this State should be denied in those cases where no extradition papers have been issued by the Governor of this State.

CONSTITUTIONAL LAW CONSTITUTIONALITY OF ACT MAKING APPROPRIATION FOR REIMBURSEMENT OF PRISON OFFICIALS FOR COUNSEL FEES INCIDENT TO INVESTIGATION GROWING OUT OF DEATH OF PRISONER

6 June 1955

An act of the Legislature is presumed to be valid and is binding on State officials until declared unconstitutional by a court of competent jurisdiction. The act appropriating \$500 for reimbursement of prison officials for counsel fees incurred at inquest into the death of a prisoner is probably constitutional.

COUNSEL FEES; DUTY OF GOVERNOR TO APPROVE FEES OF COUNSEL
EMPLOYED BY HIGHWAY COMMISSION

25 March 1955

There is no duty placed on the Governor under G. S. 136-9 to approve statements for services rendered by attorneys employed by the State Highway and Public Works Commission.

EXECUTIVE BUDGET ACT; APPLICATION TO EXPENDITURES OF
STATE HIGHWAY AND PUBLIC WORKS COMMISSION

17 December 1954

All the provisions of the Executive Budget Act apply to the State Highway and Public Works Commission to the same extent and in the same manner as they apply to all other State agencies.

DIGEST OF
OPINIONS TO SECRETARY OF STATE

CORPORATIONS; CORPORATIONS AS CORPORATORS

19 July 1955

The word "persons" as used in Chapter 55 of the General Statutes, relating to the formation of corporations, refers only to natural persons, and a corporation may not be an incorporator of another corporation.

CORPORATIONS; FOREIGN; DOMESTICATION; DOING BUSINESS;
PURCHASE AND SALE OF LAND

29 March 1955

A corporation which regularly engages in the buying, selling and holding of land, such activity being of the nature for which the corporation was formed, is required to domesticate in North Carolina.

CORPORATIONS; VOLUNTARY DISSOLUTION; WITHDRAWAL
OF VOLUNTARY CONSENT

16 February 1955

By unanimous consent of stockholders, a former unanimous consent to dissolution may be withdrawn any time prior to the time the dissolution becomes complete and final.

DIGEST OF OPINIONS TO STATE AUDITOR

STATE FUNDS; FUNDS DERIVED FROM OPERATION OF SOFT DRINK VENDING MACHINES IN STATE INSTITUTIONS

2 September 1954

Funds derived from the operation of soft drink machines in State institutions are State funds, although the profits therefrom are used for entertainment and recreation of patients therein.

DIGEST OF OPINIONS TO STATE TREASURER

BONDS; STATE BONDS OF 1861

2 September 1955

Under Section 4, Chapter 98, Session Laws of 1879, it is thought that a bond of the State of North Carolina issued on October 1, 1861, under authority of Chapter 137, Public Laws of 1860-1861, ratified on February 16, 1861, is an obligation of the State of North Carolina to the extent of 25% of its face value, but that the State is not obligated for the payment of any interest.

BONDS; REVENUE BONDS; ELIGIBILITY FOR SINKING FUND INVESTMENT

25 August 1955

Revenue bonds to be issued under Chapter 1284 may not be held for sinking fund purposes pursuant to G. S. 142-34.

DIGEST OF OPINIONS TO STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

SCHOOLS; RIGHT OF MARRIED PUPIL TO ATTEND

24 May 1956

It is thought that the mere fact that a pupil has contracted a lawful marriage will not deprive such pupil of the right to attend the public schools. Of course, if such married pupil is obviously pregnant or if the conduct of such pupil is such as to make his further attendance a menace to the school, he can and should be excluded.

Article IX, Section 2, Constitution; G. S. 115-1; G. S. 115-35(1); G. S. 115-146; G. S. 115-147.

SCHOOLS; CAFETERIAS; RIGHT TO EMPLOY AND DISCHARGE PERSONNEL

15 May 1956

It is thought that, under the provisions of G. S. 115-51 and G. S. 115-27, the County Board of Education, and not a principal or local school committee, has the authority to employ and discharge cafeteria personnel.

SCHOOLS; ELECTION AND QUALIFICATIONS OF ACTING SUPERINTENDENT

23 September 1955

It is thought that an acting superintendent of a city or county administrative unit must possess all the qualifications of a regular superintendent of schools. Section 2, Article 6 and Section 22, Article 5, Chapter 1372, Session Laws of 1955.

SCHOOLS; AUTHORITY OF COUNTY BOARD OF EDUCATION TO APPOINT MEMBERS OF SCHOOL COMMITTEE PRIOR TO FIRST MONDAY IN APRIL; AUTHORITY OF SCHOOL COMMITTEES TO ELECT PRINCIPALS AND TEACHERS

7 February 1955

It is thought that the legislative intent expressed in G. S. 115-354 is that school committeemen shall be chosen not earlier than the regular meeting of the county boards of education held in April so that such committees may be appointed by the new board of education appointed by the current session of the General Assembly, and principals and teachers are to be elected by the new committees and not by the retiring committees.

DIGEST OF OPINIONS TO COMMISSIONER OF AGRICULTURE

AGRICULTURE; FERTILIZER LABEL; "TAG"; DEFINITION

24 April 1956

A 6 x 3 inch piece of paper appended to a fertilizer bag by means of adhesive is a "tag" within the meaning of G. S. 106.50-5, which prescribes that "...the grade must appear in a manner prescribed by the Commissioner on tags attached to the container."

PULPWOOD; METHODS OF SELLING PULPWOOD

6 April 1956

Pulpwood may be sold by the cord or by weight.

EGG LAW; LABELING OF CARTONS; CRIMINAL LAW VIOLATIONS

9 February 1956

Violation of the North Carolina Egg Law with respect to labeling requirements is a misdemeanor punishable by a fine of not more than \$50.00 or imprisonment for not more than 30 days.

EGG LAW; INSPECTION TAX; NOT COLLECTIBLE ON MILITARY RESERVATION

24 January 1956

The North Carolina egg inspection tax should not be collected with respect to eggs sold or distributed to commissaries on military reservations.

CREDIT UNIONS; AMENDMENTS TO BYLAWS; NECESSITY OF FILING
WITH CLERK OF COURT

10 January 1956

Under the provisions of G. S. 54-79, amendments to the bylaws of a credit union do not become effective until a certified copy thereof, together with a certificate of approval by the State Superintendent of Credit Unions, shall be filed in the office of the clerk of the superior court of the county where the office of the credit union is located.

AGRICULTURE; PEST CONTROL; NEMATODES; RULES AND REGULATIONS

7 October 1955

Neither the Commissioner of Agriculture nor the Board of Agriculture has authority to prohibit the planting of a crop in an area even though such crop would serve as host plants to certain agricultural pests.

MEAT INSPECTION; COMMISSIONER OF AGRICULTURE; STATE BOARD OF
HEALTH; BOARDS OF COUNTY COMMISSIONERS;
MUNICIPAL CORPORATIONS

4 October 1955

Under North Carolina law, the establishment and maintenance of a program of inspection of meats and meat products at a meat packing plant, including the election of an inspector, is a function of the governmental body of a municipal corporation, if the meat packing plant is located within the limits of a municipality, or the board of county commissioners if it is not located within the limits of a municipality.

In the case of a meat inspection under G. S. 106-159 through G. S. 106-166, the fees to be charged are in the discretion of either the governing body of the municipal corporation or the board of county commissioners, depending on the location of the packing plant.

Under the provisions of G. S. 106-159 to G. S. 106-166, the Commissioner of Agriculture is empowered to grant or deny a permit to transfer, convey and sell meat and meat products any place within the State. He is not expressly empowered to close down a packing plant. However, under G. S. 130-264, the State Board of Health is empowered to close down a packing plant which does not receive a satisfactory sanitary rating under rules and regulations prepared by the State Board of Health.

REPORTS AND PUBLICATIONS OF THE DEPARTMENT OF AGRICULTURE;
H. B. 1068; CONTROL OF GOVERNOR AND ATTORNEY GENERAL
OVER REPORTS AND PUBLICATIONS OF STATE DEPARTMENTS

15 July 1955

The reports of any State department, institution or agency may be printed where there is specific statutory authority or if authorized by the Governor and Attorney General in writing; the Governor and the Attorney General may authorize, limit and prescribe the form and number of copies of said reports to be printed; no publication published at State expense can use the so-called "multi-color" process. Under G. S. 143-168 both reports and publications "now authorized or required to be printed by the several State departments and institutions" must be approved by the Governor and the Attorney General as to scope of matter to be published to the end that unnecessary matter be eliminated.

LICENSE TAXES; SALE OF HORSES AND MULES AT AUCTION
LIVESTOCK AUCTION MARKETS

7 June 1955

Under the specific language of G. S. 105-47 (Section 115 of the Revenue Act), a Livestock Auction Market, which from time to time sells at auction horses and mules brought to the Market by farmers, would be liable for the license tax imposed by G. S. 105-47 relating to the sale of horses and mules at public auction.

GASOLINE INSPECTION; UNDERGROUND STORAGE TANKS; COLOR OF FILL CAPS

1 February 1955

Rule 10 of the North Carolina Gasoline and Oil Inspection Board requires that fill caps on storage tanks be marked to indicate whether the contents are gasoline, kerosene, diesel oil or fuel oil. This rule does not support a requirement of such marking so as to show the grade of gasoline in the particular tank.

AGRICULTURE; TAX ON LIME; APPLICATION OF TAX TO
PURCHASES BY STATE AGENCIES

17 December 1954

The tax on liming materials levied under G. S. 106-84 is not enforceable against the State of North Carolina and subdivisions of government.

STATUTES; PROSPECTIVE OPERATION OF; CREDIT UNIONS

17 September 1954

The provisions of Chapter 87 of the PUBLIC LAWS OF 1935, which requires the words "credit union" to appear as a part of the name of corporations being formed under the provisions of Article 10 of Chapter 54 of the General Statutes do not apply to any "savings and loan association" formed prior to the effective date of that statute, and the statute does not automatically change the name of any such association.

STATE WAREHOUSE SYSTEM; LOANS; COTTON GIN AND EQUIPMENT

1 September 1954

Gin equipment can be considered as "warehouse property" as the term is used in G. S. 106-435 for the purpose of securing loans obtained for the erection of a cotton storage warehouse.

CREDIT UNIONS; DISCLOSURE OF INDIVIDUAL ACCOUNTS OR
TRANSACTIONS OF MEMBER

7 July 1954

No officer or agent of a credit union, as well as the superintendent of credit unions, has any authority to disclose the individual transactions, credits, debts or accounts of any member of the credit union. The superintendent of credit unions can disclose the general financial condition of the credit union if it is so set up and reflected as not to disclose the individual accounts and transactions of members.

DIGEST OF
OPINIONS TO COMMISSIONER OF INSURANCE

INSURANCE; GROUP LIFE INSURANCE; CREDITOR'S PLAN

29 June 1956

G. S. 58-210 (2) (a) authorizes the issuance of group life insurance policies to creditors of debtors who repay their indebtedness by installments. The language of the statute contemplates more than a single installment payment.

TRUSTS AND TRUSTEES; SEPARATE TRUSTS FOR SAME BENEFICIARY;
LEGALITY OF

31 May 1956

Under the North Carolina law, it is permissive for one settlor to create several independent and distinct trusts, all such trusts having the same trustee and the same beneficiary. The trusts thus created are separate entities.

INSURANCE; ELIGIBILITY TO DOMESTICATE IN NORTH CAROLINA;
HEALTH AND ACCIDENT INSURANCE COMPANIES

2 May 1956

All foreign insurance companies who desire to domesticate in this State are required to have the word "insurance" incorporated in the title of the company.

HOSPITAL AND MEDICAL SERVICE CORPORATIONS;
APPLICATIONS FOR INSURANCE THROUGH AGENTS

19 April 1956

A hospital and medical service corporation organized under Chapter 57 of the General Statutes is not required to transact its business through duly authorized and licensed agents. Applications for insurance to such companies may be made by an individual applying for a contract of insurance in his own behalf. G. S. 58-257 does not apply to such applications.

INSURANCE; INSURANCE TAXES; GROSS PREMIUMS TAX;
DOMESTIC COMPANIES OTHER THAN LIFE

9 February 1956

Under G. S. 105-228.5 certain domestic insurance companies are required to pay a tax of 1% of the premiums collected or, in lieu thereof, any such company shall pay an income tax computed as in the case of other corporations, whichever method results in the greater tax. A company required to pay the income tax levied under the alternate provision is not entitled to a deduction for gross premiums collected in states other than North Carolina and on which gross premiums taxes are paid to such other states.

INSURANCE; RECIPROCAL INSURANCE COMPANIES; GROSS PREMIUMS TAX;
DEDUCTION FOR REFUND

13 September 1955

An inter-insurance reciprocal exchange must pay the gross premiums tax under G. S. 105-228.5 on all deposits received, with no deduction for amounts returned to members except such adjustments as may result from a change of policy rates or from a cancellation or surrender of policies. Deposits received from policies written in Federal areas for persons in military service who pay the deposits by assignment of service pay may be excluded from the base on which the tax is computed.

INSURANCE; RECIPROCAL INSURANCE COMPANIES; STATEMENT AS TO
AMOUNT OF RISKS REQUIRED

2 August 1955

It is discretionary with the Commissioner of Insurance whether or not the statement referred to in G. S. 58-141 shall be filed. If, after an examination of the application, the Commissioner is of the opinion that the applicant has complied with the other sections of the Article, and other information furnished, and it appears that no subscriber has assumed on any single risk an amount greater than ten per cent of the net worth of such subscriber, then, and in such event, the Commissioner would be justified in dispensing with the statement referred to in the statute quoted above.

INSURANCE; GROUP LIFE INSURANCE; GROUP
ACCIDENT AND HEALTH INSURANCE

29 July 1955

Under the insurance laws of North Carolina the members of the North Carolina Merchants' Association and their employees constitute a group for the purpose of group life insurance and group health and accident insurance.

INSURANCE; REAL ESTATE TITLE INSURANCE COMPANIES; LIMITATIONS
ON INVESTMENT OF CAPITAL IN ANY ONE RISK

28 June 1955

G. S. 58-134.1 does not limit the risks contemplated by the statute to those located in North Carolina. The purpose of this statute is for the protection of policyholders located in this State, and, in my opinion, the statute is broad enough, and rightfully so, to extend this protection so as to prohibit a real estate title insurance company from investing more than 40% of its combined capital and surplus in any one risk located either within or without the State of North Carolina without first having obtained the approval of the Commissioner of Insurance of this State.

INSURANCE; REAL ESTATE TITLE INSURANCE COMPANIES; LIMITATIONS
ON INVESTMENT OF CAPITAL IN ABSTRACT OR TITLE PLANTS

28 June 1955

Real estate title insurance companies are authorized to do business in this State under Article 14 of Chapter 58 of the General Statutes. The purpose of the organization of companies in this State is for examining titles to real estate, of furnishing information in relation thereto, and insuring owners and others interested therein against loss by reason of encumbrances and defective titles.

G. S. 58-134.1 was enacted in 1945 and, from its language, was passed for the purpose of protecting policyholders in this State who own policies in title insurance companies. The statute specifically provides that companies doing business in this State shall not invest more than one-fourth of its total capital stock in abstract or title plants. I fail to see the distinction, insofar as the protection of policyholders is concerned, between an abstract plant which includes a complete index kept up-to-date and a title plant which contains only closed files on completed title examinations. It seems to me that, either way the companies operate, they are engaged in the business of examining titles to real estate and insuring the owners of property and others interested therein against loss by reason of encumbrances and defective titles to real property. It is, therefore, my opinion that G. S. 58-134.1 applies to both types of companies.

INSURANCE; HOUSE BILL NO. 86; RESTRICTIVE CLAUSES IN INSURANCE
POLICIES REQUIRED TO BE PRINTED IN LARGE TYPE

16 June 1955

Type smaller than eight point may be used on the first page of a Standard Fire Policy when used only in connection with the perils covered and the premiums charged. Smaller than eight point type may not be used anywhere in a Standard Fire Policy in any policy provision, extended coverage endorsement or other endorsement or rider which provides for an exclusion from the perils covered by the policy.

INSURANCE; NECESSITY OF EXAMINATION OF AGENTS TO SELL
ACCIDENT AND HEALTH INSURANCE

16 July 1954

Under G. S. 58-39.4 (8) (13) and G. S. 58-41.1 (1) (c), an individual who is licensed as a casualty insurance agent for a casualty company now writing accident and health insurance is entitled to be licensed as an accident and health insurance agent for a life and accident insurance company, and to write accident and health insurance for such company, without being required to take the examination for an accident and health insurance agent's license.

DIGEST OF OPINIONS TO ADJUTANT GENERAL

**MUNICIPAL CORPORATIONS; APPROPRIATIONS TO NATIONAL
GUARD UNITS; LOCATION OF ARMORIES**

13 December 1955

A municipality may make an appropriation of public funds to the National Guard, even though the armory site is not located within the corporate limits of the municipality concerned.

DIGEST OF OPINIONS TO STATE BOARD OF ALCOHOLIC CONTROL

INTOXICATING BEVERAGES; BEER AND WINE; DUTIES OF INSPECTORS

13 July 1955

Construing together G. S. 18-140 and G. S. 18-116.5, it is thought that the Board of Alcoholic Control may by regulations permit wine inspectors to inspect a particular outlet for both beer and wine, and to allow beer inspectors to inspect for beer and wine in cases where the same premises are licensed to sell beer and wine.

DIGEST OF OPINIONS TO COMMISSIONER OF BANKS

SMALL LOANS ACT; NOTARIES PUBLIC; FEES

24 December 1955

It would constitute a violation of the statute for any small loan agency, either directly or indirectly, openly or through subterfuge, to undertake to profit through the collection of notarial fees from borrowers either by collecting and retaining such fees, or by arranging a "kickback" by the notary to the lending agency, or by securing the services of an employee at a lower rate of compensation than such services would ordinarily command by reason of the fact that such employee collected and retained notarial fees.

USURY

27 October 1955

Except where permitted by statute, as in the case of banks, the taking or charging of interest at the rate of 6% per annum in advance is a usurious transaction. *BANK v. HUNTER*, 12 N. C. 101.

TRUSTS AND TRUSTEES; CORPORATION ACTING AS TRUSTEE
SUPERVISION OF COMMISSIONER OF BANKS

12 October 1955

No North Carolina corporation may transact a trust business in this state unless it is organized and operated pursuant to the provisions of Chapter 53 of the General Statutes relating to banks and banking.

LOANS; SMALL LOAN AGENCIES; PROPERTY APPRAISAL FEES;
TITLE CHECKING FEES

4 October 1955

The Small Loans Act does not permit a lender, subject to the provisions thereof, to charge appraiser's fees or attorney's fees to a borrower.

LOANS; SMALL LOANS ACT; "SAME BORROWER"; HUSBAND AND WIFE

4 October 1955

For purposes of the Small Loans Act, the mere fact that husband and wife sign their names in a different order on different notes when two loans are made does not make the husband the borrower in one instance and the wife the borrower in the other. It is entirely possible that "the same borrower" may in fact be securing both loans within the meaning of the Small Loans Act provision which prohibits the charging of certain fees more than once by the same lender to the same borrower within a period of 60 days.

NOTARIES; ACKNOWLEDGMENT OF INSTRUMENT WHERE NOTARY IS
FINANCIALLY INTERESTED; ACKNOWLEDGMENT OF MORTGAGE
FOR BENEFIT OF PARTNER BY NOTARY WHO IS A PARTNER

5 August 1955

Where one of two partners is a notary public, the partner who is a notary cannot take acknowledgments to chattel mortgages executed for the benefit of the partnership, as such financial interest disqualifies the notary.

LICENSE TAXES; MUNICIPALITIES; BANKS

7 July 1955

A municipality may impose a license tax on a State bank.

BANKS, BANKING; CONDITIONS UNDER WHICH COMMISSIONER OF BANKS
MAY REFUSE APPROVED CHARTER

13 January 1955

The Commissioner of Banks can refuse to certify and charter a new bank if he finds that the probable volume of business and reasonable public demand in the community in which the bank is to be formed is not sufficient to assure and maintain the solvency of the new bank and the then existing bank or banks in such community. If there is no public demand for such new bank, the Commissioner would be justified under this law in not certifying such charter.

**DIGEST OF
OPINIONS TO BUDGET BUREAU**WORKMEN'S COMPENSATION ACT; OCCUPATIONAL DISEASES;
TUBERCULOSIS NOT INCLUDED

23 March 1956

Since tuberculosis is not included in the list of occupational diseases for which Workmen's Compensation may be awarded, and since G. S. 97-53 states "the following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article", it is thought that a nurse in a tubercular sanatorium who has contracted tuberculosis while serving in the sanatorium and as a result of daily contact with tuberculous patients is not presently covered by the North Carolina Workmen's Compensation Act. DUNCAN v. CHARLOTTE, 234 N. C. 86, and HENRY v. LEATHER COMPANY, 231 N. C. 477.

EXECUTIVE BUDGET ACT; BOARD OF ENGINEERS AND LAND SURVEYORS

27 January 1956

The Boards of Cosmetic Art, Barbers and Opticians are subject to the Executive Budget Act by the express terms of the Acts creating them. The Boards created by Chapters 85, 87, 89 and 90 are not subject to the Executive Budget Act.

TRAVEL EXPENSE

29 September 1955

Board members are entitled to actual expenses incurred in attending a meeting and not necessarily the expense which might be incurred in travelling from their home to the place of the meeting.

BONDS; REQUIRED FOR PUBLIC CONTRACTS

11 August 1955

Compliance bonds are required by G. S. 143-129 when the contract is for the purchase of supplies, materials or equipment in the amount of \$1,000 or more, and for contracts for construction or repair work in the sum of \$2,500 or more.

SCHOOLS; NINE MONTHS TERM APPROPRIATION; CHILD HEALTH PROGRAM

5 August 1955

Funds of a child health program must be paid on a fee basis, or contract may be made for payment of a salary to doctors or other professionals. The statute clearly indicates that payments for child health programs are to be made on an individual basis and on a uniform fee system for services rendered to individuals. Hence, payment of salary is not permissible under the statute.

TRANSFER OF FUNDS; BOARD OF PUBLIC BUILDINGS AND GROUNDS;
PERMANENT IMPROVEMENT FUND OF 1953

4 August 1955

The Director of the Budget has the power to authorize transfer of funds provided by Chapter 1149, Laws of 1953, to an agency from a purpose provided in that Act to another purpose provided in that Act or for a project for which no specific appropriation has been made for that agency.

TRANSFER OF FUNDS; BOARD OF PUBLIC BUILDINGS AND GROUNDS;
PERMANENT IMPROVEMENT FUND OF 1953

4 August 1955

When a request has been made by the Board of Public Buildings and Grounds to the Advisory Budget Commission for permission to use a portion of funds allocated "for the purchase of lands" to air condition buildings, and such request has been approved by the Advisory Budget Commission, the Director of the Budget can authorize the transfer.

TRANSFER OF FUNDS; NORTH CAROLINA COLLEGE AT DURHAM;
PERMANENT IMPROVEMENT FUND OF 1953

4 August 1955

The Director of the Budget does have the power to authorize the transfer of funds and construction of improvements required by the North Carolina College at Durham.

BONDS; USE OF SURPLUS FUNDS FROM BOND ISSUES

4 August 1955

The State Hospitals Board of Control has joint control with the University of North Carolina of the psychiatric wing at Memorial Hospital. Chapter 995, Section 7, Laws of 1951.

Proceeds from sales of bonds authorized by the people must be used for the purposes authorized by the statute submitting the bond issue to the people. If the objects have been accomplished and a surplus remains from the proceeds of the bonds, this surplus may be used as the Legislature may direct for kindred or related purposes.

STATE EMPLOYEES; AUTHORITY TO AUTHORIZE; SPECIAL TRAINING OF
ASSISTANT COUNTY AGENT AT CORNELL UNIVERSITY

31 May 1955

There is no authority to approve out-of-State training and travel for a county agent to attend summer school for study in the special field in which he is working. Legislative authority would be required before this is undertaken.

PUBLIC BUILDINGS; CONTRACTS FOR INSTALLATION;
ASSIGNMENT OF CLAIMS AGAINST STATE

3 September 1954

An assignment by a contractor of sums to be due on a building contract between the contractor and the State is null and void since the assignment was made prior to the issuing of a warrant for payment of the claim. G. S. 147-62.

STATE HOSPITAL AT GOLDSBORO

19 August 1954

In considering bids for construction of a building at the State Hospital at Goldsboro the proposed completion time is an element to be considered in determining who is the "lowest responsible bidder". A bid stating no completion time means that the project will be completed within a "reasonable time". A bid may not be amended after bids are opened even though the completion time was omitted by inadvertence.

STATE CONTRACTS; BID BONDS; RETURN OF BID SECURITY UPON
ASCERTAINING THAT LOW BIDDER MADE AN ERROR OBVIOUS ON BID

13 July 1954

The Budget Bureau has a right to surrender bid security when it is satisfied from an inspection of the bids beyond any question that the bidder in making a bid had made an obvious error, which it would be unconscionable to enforce.

DIGEST OF
OPINIONS TO STATE COMMISSION FOR
THE BLIND

RETIREMENT SYSTEM; COVERAGE LOCAL GOVERNMENTAL EMPLOYEES'
RETIREMENT SYSTEM; ELIGIBILITY OF EMPLOYEES OF REHABILITATION
CENTER FOR THE BLIND AND BUREAU OF EMPLOYMENT FOR THE BLIND

14 October 1954

The employees of the Rehabilitation Center for the Blind and the Bureau of Employment for the Blind are not employees of the State of North Carolina or any State agency, bureau or institution, and they are not eligible for coverage under the Teachers' and State Employees' Retirement System, and the same is true as to the Local Governmental Employees' Retirement System.

DIGEST OF OPINIONS TO STATE BOARD OF EDUCATION

STATE EMPLOYEES; ADMINISTRATION; GARNISHMENT OF STATE EMPLOYEES;
TAXES TO WHICH APPLICABLE

7 November 1955

The 1955 statute authorizing the garnishment of salaries of State employees to pay delinquent State taxes is not limited in application only to taxes becoming due after the passage of the Act and applies to taxes due prior to the passage of the Act.

DIGEST OF OPINIONS TO STATE BOARD OF ELECTIONS

ELECTIONS; CANDIDATES; QUALIFICATIONS OF UNREGISTERED CANDIDATE

26 April 1956

G. S. 163-119 provides that "any unregistered person who desires to become a candidate in a party primary may do so if such person signs a written pledge with the Chairman along with the filing form that he or she will, during the registration period just prior to the next primary, register as an affiliate of the political party in whose primary he or she now intends to run as a candidate." It is thought a person who removes from one county to another in this State and establishes residence, but who has not yet registered to vote is an "unregistered person" within the contemplation of this statutory provision. Therefore, a challenge to his candidacy should be sustained unless at the time of filing his notice of candidacy he files the pledge required by this provision.

ELECTIONS; ABSENTEE BALLOTS; APPLICATIONS; PUBLIC RECORDS

27 October 1954

Applications for absentee ballots are public records and may be inspected at reasonable times while remaining in the complete control and custody of the chairman of the county board of elections.

DIGEST OF OPINIONS TO STATE BOARD OF HEALTH

PUBLIC HEALTH; VITAL STATISTICS; BIRTH CERTIFICATE FOR CHILD ADOPTED IN FOREIGN COUNTRY

25 June 1956

The Office of Vital Statistics is authorized to prepare a birth certificate for a child born in a foreign country and adopted in that country by American nationals who are now legal residents of North Carolina.

PUBLIC HEALTH; DAY NURSERIES; NO STATUTORY SUPERVISION; DUTIES

20 March 1956

The State Board of Health has no specific statutory duties with respect to child care centers and day nurseries, but the State Board of Public Welfare has formulated suggested standards for day nurseries.

PUBLIC HEALTH; DOGS; RABIES VACCINATION; FREQUENCY OF VACCINATION

6 March 1956

Under the provisions of G. S. 106-365, the State Board of Health is not required to fix the time for rabies vaccination of dogs as often as annually when the vaccine in question provides immunization for a longer period than one year. If the particular vaccine provides immunization for a three-year period, the State Board could provide that such vaccination would only be required once every three years.

DEAD BODIES; DISPOSAL OF STILLBIRTHS

16 January 1956

When the body of a stillborn child is disposed of at and by a hospital, a pathologist at the hospital may complete that portion of the burial permit ordinarily required to be completed by an undertaker.

HEALTH DEPARTMENT; DISTRICT HEALTH OFFICERS; COUNTY PHYSICIAN

14 December 1955

Although there is no constitutional prohibition against the same person serving both as district health officer and as county physician, it appears from the wording of Subsection 5 of G. S. 130-66 that it is the legislative intent that the same person not serve in both capacities at the same time.

DOGS; RABIES INSPECTOR; AUTHORITY TO APPOINT

10 November 1955

A board of county commissioners is authorized to appoint a rabies inspector, independently, on its own motion only when there is no county health officer employed by the county. When there is a county health officer it is the duty of such health officer to appoint the rabies inspector but his appointment can be made only with the approval of the board of county commissioners.

PUBLIC HEALTH; VITAL STATISTICS; BIRTH CERTIFICATE; CHANGE OF
FATHER'S NAME; CHILD BORN IN WEDLOCK;
"DECLARATION OF LEGITIMATION"

3 November 1955

A mere sworn declaration by a certain person that he is the father of a certain child does not, under the North Carolina statutes, furnish a sufficient basis for changing such child's birth certificate when the original birth certificate shows that the child was born in wedlock and that the mother's husband was the father

PUBLIC HEALTH; COUNTY AND DISTRICT HEALTH DEPARTMENTS;
MEMBERSHIP; PHARMACIST MEMBER; WHEN NO ELIGIBLE
PHARMACIST IN COUNTY

19 October 1955

When it is impossible to appoint a registered pharmacist to a local board of health because there is no eligible registered pharmacist in the county, it is proper to elect some other public spirited citizen to serve in lieu of a pharmacist.

PUBLIC HEALTH; MEAT INSPECTION; NO POWER TO IMPOSE MEAT INSPECTION
DUTIES ON COUNTY BOARD OF HEALTH; RIGHT OF COUNTY
TO ESTABLISH MEAT INSPECTION PROGRAM

21 September 1955

No statutory authority exists permitting a board of county commissioners to impose mandatory duties upon a county board of health with respect to administering a county meat inspection program established by a board of county commissioners. A board of county commissioners may, under the provisions of Article 14 of Chapter 106 of the General Statutes, establish a meat inspection program which may be integrated with a meat inspection program carried on by the Commissioner of Agriculture, without the necessity or right of imposing duties in connection therewith on a county board of health.

PUBLIC HEALTH; ESTABLISHMENT CATERING TO CLUBS; WEEKLY USE OF
CATERING FACILITIES BY CLUB; WOW BARBECUE

7 September 1955

A caterer who serves meals to various clubs on his own premises on different nights is subject to regulation by the State Board of Health pursuant to the provisions of G. S. 72-46 relating to the sanitation of restaurants. However, a civic club which uses a caterer's facilities to serve an occasional meal, such as once a week, is not subject to such regulation. Likewise, a fraternal organization is not subject to such regulation when on a single occasion it serves a barbecue to the general public.

MERIT SYSTEM COUNCIL; PER DIEM; SALT MARSH MOSQUITO STUDY
COMMISSION; STATE, COUNTY AND FEDERAL EMPLOYEES

29 July 1955

A salaried employee of State departments or agencies is not entitled to receive per diem for his service as a member of a State commission.

A salaried employee of a county or local health department is not entitled to receive per diem in such a case, while receiving a salary as such an employee, under the policy followed by the Merit System Council. The Council has statutory authority to establish a uniform schedule of compensation for employees subject to the Merit System.

An employee of the Federal Government is, under North Carolina law, entitled to receive per diem for his services as a member of a State Commission.

PUBLIC HEALTH; CONTAGIOUS AND INFECTIOUS DISEASES; RULES AND
REGULATIONS OF THE STATE BOARD OF HEALTH; PSITTACOSIS;
DESTRUCTION OF PSITTACINE BIRDS AFFECTED WITH PSITTACOSIS

29 July 1954

The N. C. State Board of Health is authorized to make rules and regulations for the control of infectious diseases, and regulations providing for the destruction of Psittacine birds, when it is known that they are infected with Psittacosis, are believed to be constitutional and valid as well as the regulations requiring that a certain number of birds from each aviary or owner be sacrificed to make the necessary tests when there is reasonable grounds to believe that Psittacosis exists in said aviary.

PUBLIC HEALTH; VITAL STATISTICS; AMENDMENTS; CHANGING
BIRTH CERTIFICATE AS TO RACE

12 July 1955

Birth or death certificates can be changed as to race by amendments dated, signed and witnessed, but the State Registrar should promulgate rules and regulations governing the type and amount of proof showing or supporting the correctness of the change or amendment, which proof should accompany the request for a change or amendment.

In questions governing the race of a person it is proper to show the race of such person by general reputation, by the person's own admissions or confessions, by expert evidence, such as physician or anthropologist, and also by the opinion of people who have known the person in question over a period of years and who qualify themselves as being able to give such an opinion. Supporting evidence can be used in the form of the type of schools attended, designation of color on tax listings, as well as birth certificates of the parents of the person concerned.

PUBLIC HEALTH; VITAL STATISTICS; NEW BIRTH CERTIFICATE UPON
ADOPTION; SURRENDER OF OLD ONE

11 July 1955

Where a child is adopted and the State Registrar places the original birth certificate under seal, the register of deeds of the county in which the child is born and where, also, the certificate of birth is recorded, may, if he desires, surrender the original certificate. It is altogether probable that under the amendments to G. S. 130-94 the register of deeds could be required to surrender the original certificate, but since the law is somewhat ambiguous on these subjects it would be much the better practice to let the surrender of the certificate by the register of deeds be a voluntary Act.

PUBLIC HEALTH; SANITARY DISTRICTS; AUTHORITY OF STATE BOARD OF
HEALTH TO FIX BOUNDARIES

7 July 1955

The initial boundary line or description of same contained in a petition presented to a board of county commissioners in forming a sanitary district is not conclusive, and the N. C. State Board of Health, when it passes upon such petition, is given authority by statute to define and vary the boundary lines of the sanitary district when it declares the same to be created.

**PUBLIC HEALTH; VITAL STATISTICS; AUTHORITY TO CERTIFY AS TO COPIES
OF BIRTH CERTIFICATES AND DEATH CERTIFICATES**

26 July 1954

The State Registrar of Vital Statistics is the only officer authorized by statute to issue certified copies of birth and death certificates. Registrars and other officers in connection with the Vital Statistics program do not have such authority.

**DIGEST OF
OPINIONS TO EMPLOYMENT SECURITY
COMMISSION**

**STATE TREASURER; BONDS; EMPLOYMENT SECURITY COMMISSION; VETERANS
COMPENSATION FUND; FEDERAL EMPLOYMENT COMPENSATION;
COVERAGE OF STATE TREASURER'S BONDS**

28 December 1955

The State Treasurer has custody of two special funds known as "Unemployment Compensation for Veterans" and "Unemployment Compensation for Federal Employees." The State Treasurer's general bond would cover these special funds. The special bond given by the State Treasurer to cover another special fund known as "Unemployment Compensation Fund" which does not include the veterans' and federal employees' funds referred to above would not cover such veterans' and employees' funds.

**CRIMINAL LAW; SUSPENDED SENTENCES; JUSTICES OF THE PEACE;
PARTIAL COMPLIANCE WITH CONDITIONS**

3 November 1955

When a condition of a suspended sentence is that the defendant shall repay a certain sum of money fraudulently obtained, and the defendant breaches the condition by paying less than the total, the active sentence may be invoked and there is no duty to refund to the defendant the partial payment.

EMPLOYMENT SECURITY LAW; NOTICES REQUIRED TO BE SENT BY
REGISTERED MAIL; NEW CERTIFIED MAIL SERVICE

5 July 1955

The provisions of the Employment Security Act in specific language requires certain notices to be sent by registered mail with return receipt requested. The Post Office Department has established what is called a *new certified mail service* which accomplishes the same results at a cheaper rate, but in view of the statute the Employment Security Agency would not be warranted in using this new service since the statute specifically designates the registered mail process with return receipt.

DIGEST OF
OPINIONS TO THE GREATER UNIVERSITY

STATE UNIVERSITY; AID TO DISTRICT HEALTH DEPARTMENT;
PURCHASE OF AUTOMOBILE

6 April 1956

Under the facts of this case, the University of North Carolina could not act as a purchasing agency for a local health department in order to purchase of an automobile for the health department under state contract.

STATE STRUCTURAL PEST CONTROL COMMISSION;
"GRANDFATHER CLAUSE"; APPLICATION THEREOF

2 March 1956

The 1955 Structural Pest Control Act contained a "Grandfather clause" exempting from examinations applicants for licenses who owned or were engaged in a pest control business "for a period of six months next preceding" July 1, 1955. Under this provision, the "grandfather clause" would not be applicable to a person who ceased to own or engage in a pest control business in May 1954.

PYROTECHNICS; USE OF PYROTECHNICS IN BUSINESS OR INDUSTRY

12 September 1955

Explosives may be used in the course of ordinary business or industry and for the protection of crops from crows and other birds or animals. No permit is required to be obtained from the board of county commissioners for this purpose.

TAXATION; INCOME; RESIDENT INDIVIDUAL; INCOME FROM ANOTHER STATE

21 April 1955

Income earned by a resident of this state from an established business or real or tangible personal property located in another state may be deducted from gross income to the extent that such income is reported to the other state, which other state levies an income tax.

**VETERANS; SCHOLARSHIPS FOR CHILDREN OF WAR VETERANS;
SCHOOL OF NURSING; DURATION OF SCHOLARSHIPS**

8 December 1954

A scholarship granted to a child of a World War veteran pursuant to Article 15 of Chapter 116 of the General Statutes may not be extended beyond four academic years which years need not be consecutive. An academic year is two semesters, so the maximum duration of the scholarship is eight semesters.

**DIGEST OF
OPINIONS TO STATE HIGHWAY AND
PUBLIC WORKS COMMISSION****PRISONERS; CONVICT-MADE-GOODS; OUT-OF-STATE CONVICT-MADE-GOODS**

22 June 1956

Under the provisions of Section 14-346 of the General Statutes, it is unlawful to sell in this state goods which have been manufactured or produced by convicts in another state. With certain exceptions, it is also a federal offense to transport convict-made-goods in interstate commerce.

**HIGHWAY HISTORICAL MARKERS; APPROPRIATIONS THEREFOR;
TRANSFER OF HIGHWAY FUNDS**

2 March 1956

The authorization contained in G. S. 136-43 for the expenditure of funds to purchase historical markers would not authorize transfer of any of such funds to the Department of Archives and History for the purpose of paying the salary of research work on the historical marker program.

ALLOCATION OF MUNICIPAL MAINTENANCE FUNDS

3 August 1955

The adoption of the recommendation of the Code Commission by the General Assembly in enacting a codified system of laws has the effect of reinstating a statute which has theretofore been repealed.

ATTORNEYS; AUTHORITY OF THE GOVERNOR, THE ATTORNEY GENERAL OR THE
STATE HIGHWAY AND PUBLIC WORKS COMMISSION TO EMPLOY PRIVATE
COUNSEL TO DEFEND A STATE EMPLOYEE CHARGED WITH CRIME

16 May 1955

There is no authority for the Governor, the State Highway and Public Works Commission or the Attorney General to employ private counsel to defend a State employee charged with crime. Such action may be taken only with the approval of the General Assembly.

PRISONERS; DISPOSITION OF CHILDREN BORN OF FEMALE PRISONERS.
G. S. 148-47

14 January 1955

G. S. 148-47 provides that children born of female convicts who are in custody, upon arrival at a suitable age, be surrendered to the Clerk of Superior Court of Wake County for disposition as the law provides in the case of children whose parents are dead or unable to provide for them. Since the duties of the Clerk of Superior Court as Juvenile Judge have been supplanted by the Domestic Relations Court since the enactment of this statute, it is reasonable to assume that the surrender of these infants may now be made to the Domestic Relations Court.

INSPECTION FEES; RIGHT OF GOVERNOR TO TRANSFER
SURPLUS TO HIGHWAY FUND

7 January 1955

No statutory authority exists to authorize the Governor to transfer from the general fund to the highway fund the gasoline and oil inspection fees provided by law.

DIGEST OF OPINIONS TO INDUSTRIAL COMMISSION

INDUSTRIAL COMMISSION; COURTS; NORTH CAROLINA TORT CLAIMS ACT;
AUTHORITY TO APPOINT NEXT FRIEND

8 February 1955

Reasoning by analogy from the case of *HOUSER v. BONSALE*, 149 N. C. 51, it is thought that the North Carolina Industrial Commission has the inherent power to appoint a next friend to represent a minor in a claim pending before the Industrial Commission against an agency of the State under the Tort Claims Act. G. S. 1-64; G. S. 7-149 (Rule 16); G. S. 143-291; G. S. 97-48; G. S. 97-49; *TATE v. MOTT*, 96 N. C. 19; *MORRIS v. GENTRY*, 89 N. C. 248; *IN RE Hayes*, 200 N. C. 133.

DIGEST OF OPINIONS TO DEPARTMENT OF CONSERVATION AND DEVELOPMENT

CRIMINAL LAW; VENUS FLYTRAP STATUTE; SALE OF PLANTS

28 November 1955

Section 14-129.1 of the General Statutes makes it unlawful for any person to sell or barter any Venus flytrap plants except when such sale or exportation has been authorized in writing by the Department of Conservation and Development for the purposes of scientific experimentation or study.

CONSERVATION AND DEVELOPMENT; COMMERCIAL FISHERIES;
SALES BY PERSONS USING NON-COMMERCIAL GEAR

6 September 1955

Persons catching fish on boats by the use of hand lines are not liable for fishing taxes unless they sell or offer to sell the fish so caught.

**SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT;
EMPLOYEES WITHIN THE MEANING OF ARTICLE V**

26 August 1955

Under the language of Article V of the Southeastern Interstate Forest Fire Protection Compact, enacted as Chapter 803, Session Laws of 1955, it is thought that any employee of the forestry division of the North Carolina Department of Conservation and Development, and coming within the definition of an employee, as that term is defined in G. S. 97-2(b), would be protected by our compensation laws when sent to another state under the provisions of that Compact.

CONSERVATION AND DEVELOPMENT; COMMERCIAL FISHERIES

6 June 1955

Leaving skiffs attached to anchors overnight when not being fished is a violation of regulation of the Board of Conservation and Development, No. 117, and the skiffs and anchors may be seized by the Commissioner of Commercial Fisheries under the provisions of G. S. 113-135 and 113-140.

**CONSERVATION AND DEVELOPMENT; COMMERCIAL FISHERIES;
OYSTER GROUND LEASES**

31 May 1955

The Board of Conservation and Development has no statutory authority to refund rent paid for oyster ground leases in the event the Federal government establishes ownership of the property on which the leases were granted.

**CONSERVATION AND DEVELOPMENT; COMMERCIAL FISHERIES; REGULATION 17;
AUTHORITY TO PROHIBIT NET FISHING IN VICINITY OF PIER**

12 May 1955

Although the question is not totally free from doubt, the Board of Conservation and Development has the authority to enact a regulation prohibiting the setting of commercial fishing nets within a reasonable distance of a sport fishing pier located in the ocean.

STATE PROPERTY; SPECIAL PEACE OFFICERS APPOINTED BY THE GOVERNOR FOR
THE PROTECTION OF STATE PARKS, LAKES, RESERVATIONS, ETC., UNDER
THE CONTROL OF THE DEPARTMENT OF CONSERVATION AND DEVELOPMENT

9 September 1954

Special peace officers appointed by the Governor for the protection of State parks, lakes, reservations and other lands or waters under the control or supervision of the Department of Conservation and Development have State-wide jurisdiction to make arrests with warrant in the performance of their duties. Such peace officers serve at the pleasure of the Governor or until the termination of their employment with the Department of Conservation and Development.

CONSERVATION AND DEVELOPMENT; COMMERCIAL FISHERIES;
PROCESS TAX; CRAB DEHYDRATION PLANT

4 August 1954

A crab refuse dehydrating plant is not liable for the tax imposed by subsection (c) of G. S. 113-174.3.

CONSERVATION AND DEVELOPMENT; COMMERCIAL FISHERIES;
LEASES OF OYSTER LANDS, RENEWAL RIGHTS

30 July 1954

Oyster beds leased under the provisions of Article 16 of Chapter 113 are probably subject to an unlimited number of renewal leases of ten-year periods, subject to the other limitations of the chapter.

STATE PROPERTY; CONSERVATION AND DEVELOPMENT; AUTHORITY TO LEASE

1 July 1954

The Department of Conservation and Development may prevent the granting of vacant and unappropriated lands to the extent provided in G. S. 146-50. There is no authorization for leasing vacant and unappropriated lands not under the control of a specific State agency. Lands under the control of the Department of Conservation and Development may be leased upon compliance with G. S. 113-44.

DIGEST OF OPINIONS TO MEDICAL CARE COMMISSION

MEDICAL CARE COMMISSION; CONSTRUCTION BIDS; REJECTION OF LOW BID

28 June 1956

When governmental contracts are awarded (G. S. 143-129), the award shall be made to the lowest responsible bidder, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

MEDICAL CARE COMMISSION; HOSPITAL LICENSING ACT; CONDITIONAL LICENSES

15 May 1956

When building defects are discovered with respect to a hospital which is subject to licensing, a conditional and temporary license may be issued, conditioned on remedying the defect in a manner and time determined to be appropriate.

MEDICAL CARE COMMISSION; HOSPITAL LICENSING ACT; BUILDING DEFECTS; REFUSAL TO REMEDY

15 May 1956

The Medical Care Commission is without authority to issue a temporary license to a hospital which does not comply with the standards set forth in its rules and regulations when said hospital refuses to agree to remedy defects which disqualify said hospital for licensing.

MEDICAL CARE COMMISSION; HOSPITAL EQUIPMENT; ADVERTISEMENTS FOR BIDS

12 April 1956

In the event of ambiguity in the specifications requesting bids on certain hospital equipment, it would not be proper to reject the low bid. All bids should be rejected and the specifications should be drawn clearly and re-advertised.

**MEDICAL CARE COMMISSION; AUTHORITY TO ACT AS AGENCY OF THE STATE
IN THE ADMINISTRATION OF THE MEDICAL FACILITIES**

20 October 1954

Under the Federal amendments to the Hill-Burton Act providing for the allotment of Federal funds for diagnostic and treatment centers, chronic diseases hospitals, rehabilitation facilities and nursing homes the North Carolina Medical Care Commission is a designated State agency to cooperate and conform with the Federal Act and administer grants given thereunder by the Federal Government for such purposes.

**MEDICAL CARE COMMISSION; PAYMENT FOR INDIGENT PATIENTS;
AUTHORITY TO INCREASE PAYMENT**

6 July 1954

The N. C. Medical Care Commission is not authorized to increase the amount of \$1.50 per day for indigent patients to the sum of \$2.00 per day, since the statute in mandatory language fixes \$1.50 per day as a maximum.

**DIGEST OF
OPINIONS TO BOARD OF MEDICAL EXAMINERS**

MEDICINE; PRACTICE OF MEDICINE BY CORPORATIONS

9 December 1955

Non-profit and public hospitals may promulgate reasonable rules fixing the standards of those who may practice therein and limiting or fixing reasonable fees for services to be rendered, including medical or surgical, and may arrange with duly licensed physicians and surgeons to provide these services in the hospital. Such services so rendered do not constitute the practice of medicine. A private corporation is prohibited from practicing medicine, and employment by a corporation of a physician or surgeon to treat the ill in order that the corporation may profit therefrom is prohibited by the laws of North Carolina.

DIGEST OF OPINIONS TO MERIT SYSTEM COUNCIL

MERIT SYSTEM COUNCIL; MEMBERS OF COUNCIL;
APPLICABILITY OF HATCH ACT

18 June 1956

Although it would appear that members of the North Carolina Merit System Council are subject to the Hatch Act, this is a federal question and the question should be presented to the attorneys for the United States Civil Service Commission. A person who is subject to the Hatch Act would violate the Hatch Act by introducing a candidate for office who is to make a campaign speech.

MERIT SYSTEM COUNCIL; HATCH ACT; APPLICABILITY TO CLERK
OF COUNTY BOARD OF ELECTIONS

3 April 1956

In view of the Federal Hatch Act, it is believed that an employee under the Merit System should not undertake to serve as clerk for a county board of elections.

MERIT SYSTEM COUNCIL; STATE VETERANS' PREFERENCE LAW;
ELIGIBILITY OF MEMBERS OF THE COAST GUARD

26 October 1954

During World War II the Coast Guard was made a branch of the armed services by Executive Order of the President, and it is now by statute made a permanent branch of the armed forces. Persons serving in the Coast Guard during time of war are entitled to a veteran's preference in State employment by virtue of State statute.

MERIT SYSTEM COUNCIL; HATCH ACT; APPLICABILITY OF PERSON SERVING AS
ASSISTANT DEPUTY OR REGISTRAR ON ELECTION DAY

21 September 1954

Under the Hatch Act an employee subject to the Merit System Rule and whose salary is financed in whole or part by grants in aid from the Federal Government should not act as an assistant or deputy to a registrar.

**MERIT SYSTEM COUNCIL; LOCAL HEALTH OFFICER;
PERMANENT STATUS; DISMISSAL**

6 July 1954

Under the present statute, although local health officers must have the qualifications required by the Merit System they are subject to dismissal at the pleasure of the local board of health. This provision could probably be nullified by a federal regulation to the contrary by virtue of G. S. 126-15.

**DIGEST OF
OPINIONS TO STATE HOSPITALS
AND INSTITUTIONS**

**TUBERCULOSIS SANATORIUMS PATIENTS IMPRISONED FOR FAILURE TO TAKE
TREATMENT; PAYMENT OF FEES**

24 January 1956

Under the provisions of Chapter 89 of the Session Laws of 1955, the county of legal residence of a person committed to the prison department of the North Carolina Sanatorium for failure to submit to treatment for tuberculosis must pay to the Sanatorium the regularly established fee for indigent or welfare patients.

**TUBERCULOSIS SANATORIUMS; ADMISSION OF PATIENTS; RESIDENCE
REQUIREMENTS AS TO INDIGENTS**

1 December 1955

An indigent person is not eligible for admission as a patient to a State Tuberculosis Sanatorium until such person has resided continuously within this State for a period of one year prior to application for admission

**DIGEST OF
OPINIONS TO PERSONNEL DEPARTMENT**

MERIT SYSTEM; SUPERVISOR OF MERIT EXAMINATIONS; APPOINTMENT

11 May 1956

Neither the statutes nor existing Merit System regulations require the supervisor of merit examinations to take a merit examination himself.

**MERIT SYSTEM COUNCIL; ACCRUED ANNUAL LEAVE; TRANSFER OF PERSON
FROM STATE POSITION TO COUNTY POSITION**

18 January 1955

A Merit System employee leaving State service and going into county service, which also requires Merit System as to method of employment, is entitled to be paid in a lump sum for accrued annual leave upon termination of State service.

EMPLOYEES; TERMINAL LEAVE; SICK LEAVE

21 July 1954

An employee who has severed his relations with the State and who has been paid for his accumulated vacation or annual leave cannot claim sick leave after his last day of work.

**DIGEST OF
OPINIONS TO BOARD OF EXAMINERS OF
PLUMBING AND HEATING CONTRACTORS**

**PLUMBING AND HEATING CONTRACTORS; SUSPENSION OR REVOCATION
OF LICENSE FOR NEGLIGENCE**

16 January 1956

The State Board of Examiners of Plumbing and Heating Contractors does not have authority to suspend or revoke the license of a plumbing or heating contractor who may be guilty of gross negligence in making an installation other than in a city or town of 3500 population or more. The Act specifically provides that it is applicable to persons or firms engaged in the business in cities or towns having a population of more than 3500.

**PLUMBING AND HEATING CONTRACTORS; DEFINITION OF CITIES AND TOWNS;
LICENSES ISSUED WITHOUT EXAMINATION**

23 August 1954

The State Board of Examiners of Plumbing and Heating Contractors can issue a license without examination, under G. S. 87-21(d), to those persons who had an established place of business in a city or town which had attained a population of more than 3,500 as of record of the last United States census, and who produce evidence of being engaged in such business and pay the required occupational revenue tax. The words "city or town" refer to organized municipal corporations, chartered or incorporated under the laws of the State and acting as political subdivisions or units of government. Kannapolis is not incorporated and, therefore, this provision would not be applicable to a resident of Kannapolis.

**DIGEST OF
OPINIONS TO STATE PROBATION COMMISSION**

**PROBATION; SUSPENSION OF SENTENCE; REVOCATION OF PROBATION
OR SUSPENSION OF SENTENCE; PRIVATE PROSECUTION**

14 December 1955

There are no statutory provisions authorizing the appearance of "private prosecution" in a hearing relating to the violation of the terms of a suspended sentence by a person placed on probation under the State probation law.

PROBATION; OUT-OF-STATE SUPERVISION

8 July 1954

Where a judge permits a prisoner under a judgment of suspended sentence to go into another state the Probation Department has no jurisdiction or supervision over such probation, since under the Out-Of-State Supervision Act investigation has to first be made, and the receiving state must agree to accept and supervise the probationer.

DIGEST OF OPINIONS TO STATE BOARD OF PUBLIC WELFARE

PUBLIC WELFARE; ADOPTION; WHO MAY ADOPT; G. S. 48-4; APPOINTMENT
OF NEXT FRIEND FOR MINOR PETITIONER

9 June 1955

G. S. 48-4, providing that any person over twenty-one years of age may petition to adopt a child, was probably intended to only permit the creation of a relationship of parent and child through adoption where the petitioners (husband and wife) have reached the age of twenty-one years at the time the petition is filed and this relationship cannot be created by a next friend appearing for an infant petitioner since the infant herself is the real plaintiff (petitioner) in the proceeding.

PUBLIC WELFARE; ELIGIBILITY OF MEMBERS OF COUNTY BOARDS
OF PUBLIC WELFARE

8 June 1955

The three months added to the terms of members of county boards of public welfare by the provisions of House Bill 397, ratified on March 17, 1955, should not be considered for the purpose of determining eligibility of members of county boards of public welfare, who were appointed to fill unexpired terms, to fill successive terms on the board. Determination of eligibility of these members to serve successive terms should be made in accordance with opinion of 23 March 1950 contained in letter to Dr. Ellen Winston, Commissioner of Public Welfare, without considering the additional three months added to the terms by the above bill.

PUBLIC WELFARE; ADOPTION; AUTHORITY TO ESTABLISH
STANDARDS FOR PLACEMENT OF CHILDREN

17 May 1955

The State Board of Public Welfare has the authority to set standards with regard to the placing and supervision by both private and public agencies of dependent, delinquent, and defective children including children placed for adoption. Reference G. S. 108-3, subsection (3); G. S. 108-14, subsections (4) and (10); and G. S. 110-49.

**PUBLIC WELFARE; OLD AGE ASSISTANCE LIEN; G. S. 108-30.1 ET SEQ.;
SETTLEMENT OF CLAIM BY COUNTY COMMISSIONERS**

6 April 1955

Upon payment of the amount of the claim against the estate of an old age assistance recipient to the county by the heirs of a deceased recipient, the lien should be cancelled. If the amount of the claim exceeds the value of the property covered by the lien, the county may still accept a reasonable sum in settlement of the claim and may thereupon cancel the lien. The reasonableness of the sum offered in relation to the value of the property covered by the lien should be determined by action of the county commissioners.

**DIGEST OF
OPINIONS TO DIVISION OF PURCHASE
AND CONTRACT**

**PURCHASE OF MATERIALS, EQUIPMENT AND SUPPLIES BY COUNTY BOARD OF
EDUCATION; PENALTIES FOR FAILURE TO DO SO**

27 September 1955

County boards of education are required under G. S. 115-372 to purchase all needed materials, equipment and supplies under contracts awarded by the Division of Purchase and Contract. Purchase of such materials, equipment and supplies otherwise than under State contract renders the contract for such purchases void and subjects individual board members to personal liability for the costs thereof. Such action would also make such board members subject to criminal prosecution for failure to obey the command of a statute. STATE v. BISHOP, 228 N. C. 371.

**MILK COMMISSION; REQUIREMENT OF 10 DAYS' NOTICE OF
CHANGE IN PRICE OF DAIRY PRODUCTS**

16 August 1955

The question should be answered in the affirmative. All that the statute requires is that the milk commission be given ten days' notice of the change in the posted price of dairy products. As this change will not take effect until more than ten days have elapsed, the statute can be complied with.

LIBRARIES; PURCHASES FOR COUNTY AND REGIONAL LIBRARIES

16 September 1954

The Division of Purchase and Contract is not authorized to make purchases of materials and supplies for county, municipal or regional libraries, in the expenditure of local funds or funds provided by the State. Such libraries are not State agencies within the meaning of the statutes controlling activities of the Division of Purchase and Contract.

**DIGEST OF
OPINIONS TO RETIREMENT SYSTEM****RETIREMENT SYSTEM; SOCIAL SECURITY; COVERAGE; SUBSTITUTE TEACHERS;
NOT COVERED BY RETIREMENT SYSTEM**

28 June 1956

A person employed as a substitute teacher is not covered by the Teachers' and State Employees' Retirement System.

**RETIREMENT SYSTEM; SOCIAL SECURITY; COVERAGE; LAW ENFORCEMENT
OFFICERS; RELATIONSHIPS OF VARIOUS STATE RETIREMENT SYSTEMS**

28 June 1956

A local enforcement officer employed by a participating governmental unit automatically becomes a member of the Local Governmental Employees' Retirement System and a state law enforcement officer automatically becomes a member of the Teachers' and State Employees' Retirement System unless he personally, in each case, elects to become a member of the Law Enforcement Officers' Benefit and Retirement Fund.

RETIREMENT SYSTEM; DEATH IN SERVICE; DESIGNATED BENEFICIARY

18 June 1956

When a state employee dies in service, the person he has designated as his beneficiary is entitled to a refund of his retirement system contributions even though such beneficiary is not his wife and is a woman he lived with before marriage.

SOCIAL SECURITY COVERAGE; DURHAM PUBLIC LIBRARY

9 May 1956

The Durham Public Library is a governmental entity for Social Security purposes.

SOCIAL SECURITY COVERAGE; BETHEL PUBLIC LIBRARY

9 May 1956

The Bethel Public Library is a governmental entity for Social Security purposes.

SOCIAL SECURITY; COVERAGE; CITY OF HENDERSONVILLE;
HENDERSONVILLE WATER COMMISSION

4 May 1956

The City of Hendersonville and the Hendersonville Water Commission are regarded as a single political entity for Social Security purposes.

SOCIAL SECURITY; COVERAGE; CITY OF GREENVILLE;
GREENVILLE UTILITIES COMMISSION

4 May 1956

The City of Greenville and the Greenville Utilities Commission constitute a single political entity for Social Security purposes.

SOCIAL SECURITY; COVERAGE; CITY OF CONCORD; CONCORD
BOARD OF LIGHT AND WATER COMMISSIONERS

4 May 1956

The Concord Board of Light and Water Commissioners is a part of the Concord City Government and its employees should be treated as City employees for Social Security purposes.

SOCIAL SECURITY; COVERAGE; CITY AND COUNTY BOARDS OF EDUCATION;
PART-TIME REGULAR POSITIONS

4 May 1956

For Social Security purposes, the position of being a member of a city or county board of education is a part-time regular position.

RETIREMENT SYSTEM; UNIVERSITY PROFESSORS;
WHEN RETIREMENT EFFECTIVE

1 May 1956

Although University professors are ordinarily paid in 12 installments beginning in September and running through August, such a person becomes eligible for retirement on July 1st provided he has completed all duties for the current year and been paid the total salary therefor prior to June 1st.

RETIREMENT FUND; SOCIAL SECURITY COVERAGE; REFERENDUM;
IMPLEMENTING LEGISLATION

17 April 1956

Existing State legislation is inadequate to implement Social Security coverage with respect to the Law Enforcement Officers' Benefit and Retirement Fund.

RETIREMENT SYSTEM; BENEFICIARY UNDER OPTION; STATUTORY
PROHIBITION AGAINST ASSIGNMENT

16 April 1956

A beneficiary under an option selected with respect to The Teachers' and State Employees' Retirement System is prohibited by Section 135-9 of the General Statutes from assigning benefits thereunder.

RETIREMENT SYSTEM; RETIREMENT BENEFITS; REFUND OF CONTRIBUTION;
PROOF OF DEATH; A-6632 W-33146

3 April 1956

A United States General Accounting Office document recognizing the death of a member of the Armed Forces is adequate proof of death, nothing else appearing to the contrary, for the purpose of making a refund of a contribution to the State Retirement System Fund.

RETIREMENT SYSTEM; SECRETARY; LOCAL GOVERNMENTAL EMPLOYEES'
RETIREMENT SYSTEM; SECRETARY; "STATE AGENCY" FOR
SOCIAL SECURITY PURPOSES; COMPENSATION

22 March 1956

The Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Government Employees'

Retirement System are each authorized to employ a secretary and fix his compensation, and the same person may be employed to serve in both capacities. The Secretary of the Teachers' and State Employees' Retirement System is by statute designated the "State agency" for federal Social Security administrative purposes, and statutory duties are imposed on said Secretary with respect thereto.

RETIREMENT SYSTEM; COVERAGE; STATE COMMISSION FOR THE BLIND;
REHABILITATION CENTER EMPLOYEES; VENDING STAND EMPLOYEES

6 March 1956

Employees of the State Blind Commission, whether they be blind persons employed on a salary basis to operate vending stands or whether they be supervisory employees, and employees operating the Rehabilitation Center for the Blind are all State employees and subject to the coverage of the Teachers' and State Employees' Retirement System in the same manner as employees of any other State department, commission or agency.

RETIREMENT SYSTEM; LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT
SYSTEM; RIGHT TO DRAW BENEFITS FROM EACH SYSTEM

10 February 1956

A person who has received more than 20 years service credit as a State employee or teacher subject to the provisions of the Teachers' and State Employees' Retirement System, and who has served a number of years as a local governmental employee subject to the coverage of the Local Governmental Employees' Retirement System is, upon reaching retirement age, entitled to receive benefits from both retirement systems.

SOCIAL SECURITY; STATE HIGHER EDUCATIONAL INSTITUTIONS;
EMPLOYEES AS STATE EMPLOYEES

17 January 1956

Employees of State-supported higher educational institutions are, for Social Security purposes, State employees.

SOCIAL SECURITY; SCHOOL TEACHERS; LOCAL, NOT STATE EMPLOYEES

17 January 1956

Public school teachers are not State employees but are employees of the various local, county and city boards of education.

**RETIREMENT SYSTEM; RETIREMENT BENEFITS; MISTAKE IN AGE OF WIFE;
RIGHT TO MAKE SUBSEQUENT ADJUSTMENTS**

11 January 1956

When a member of the Teachers' and State Employees' Retirement System furnishes proof that such person's age was incorrectly noted on retirement records, the same may be corrected and appropriate adjustments made in the payment of benefits.

SOCIAL SECURITY; SUPERIOR COURT REPORTER; EMPLOYEE STATUS

1 December 1955

A court reporter who serves in several counties and is paid separately and directly by each county is an employee of each of the several counties involved.

**RETIREMENT SYSTEM; COVERAGE; EMPLOYEES OF WAR MANPOWER
COMMISSION; RIGHT TO CREDIT FOR TIME WHILE EMPLOYED
BY WAR MANPOWER COMMISSION**

29 September 1955

A person is not eligible to receive credit for service with the War Manpower Commission insofar as the North Carolina Teachers' and State Employees' Retirement System is concerned unless he was an employee of this State at the time he came under the jurisdiction of the War Manpower Commission (as authorized by G. S. 135-3), or unless he was transferred from Commission employment to State employment, under the conditions authorized by G. S. 135-16.

SOCIAL SECURITY; COVERAGE; CABARRUS MEMORIAL HOSPITAL EMPLOYEES

9 September 1955

The employees of the Cabarrus County Hospital are eligible for Social Security coverage under the provisions of Article 2 of Chapter 135 of the General Statutes.

SOCIAL SECURITY; ELIGIBILITY; HOSPITALS; DAVIE COUNTY HOSPITAL

9 September 1955

The employees of the Davie County Hospital are eligible for Social Security coverage under the provisions of Article 2 of Chapter 135 of the General Statutes.

SOCIAL SECURITY; EXCLUSION OF POLICEMEN

25 August 1955

The words "policemen's position" is restricted to that group of law enforcement officers designated as policemen in the North Carolina General Statutes, Sections 140-20 and 140-21, whose duties are devoted to the enforcement of law in cities or towns, and as a corollary, that no other law enforcement officers come within the term. It is submitted that municipal policemen are the only law enforcement group excluded from the Social Security Act, Section 218, subsection 5, as passed by the 83rd Congress, which conclusion is drawn from the fact that the words "other law enforcement units, agencies or departments" are deleted from the bill, thereby showing an intent that they not be excluded.

RETIREMENT SYSTEM; ARTICLE II, SECTION 31 OF CONSTITUTION OF NORTH CAROLINA; H. B. 498; TRANSFER OF CONTRIBUTIONS FROM THE RETIREMENT SYSTEM UNDER SECTIONS 3 AND 9 OF H. B. 498

26 July 1955

The expenditure of funds as authorized by Sections 3 and 9 of H. B. 498 in order to accomplish the integration of the Old Age and Survivors' Insurance Program with the Teachers' and State Employees' Retirement System is not contrary to Article II, Section 31 of the Constitution of North Carolina, inasmuch as such expenditures are for Retirement System purposes.

RETIREMENT SYSTEM; ELIGIBILITY FOR PENSION UNDER H. B. 937; PRIOR SERVICE AND MEMBERSHIP SERVICE

6 July 1955

H. B. 937 grants a pension to a school teacher who has completed 25 years of service and is 70 years of age on or before July 1, 1955 and is unable to teach. The only requirements are necessary service period, age, and inability to teach; it does not require that any of the years of the service period shall be creditable prior service as defined in the Teachers' and State Employees' Retirement Act, nor does it require that the service shall be membership service as defined in said Act. In short, it only requires the necessary number of years of service as a teacher prior to the cut-off date.

RETIREMENT SYSTEM; EMPLOYEE IN FEDERAL SERVICE;
WITHDRAWAL OF MEMBERSHIP

26 October 1954

An employee who leaves State service and goes on the Federal payroll and who is absent from the System for five consecutive years and who withdraws his accumulated contributions ceases to be covered under the Retirement System and ceases to be a member. The Retirement System is not authorized to consider Federal service as State service.

RETIREMENT SYSTEM; COVERAGE; EMPLOYEES OF WHOLLY OWNED
INSTRUMENTALITY OF GOVERNMENT

23 July 1954

Where a charitable, non-profit hospital corporation operates under the control of the county and its basic property and fixtures are owned by the county, it is a wholly owned instrumentality of government, and its employees are entitled to coverage under Title II of the Social Security Act.

DIGEST OF
OPINIONS TO WILDLIFE RESOURCES
COMMISSION

WILDLIFE RESOURCES COMMISSION; BOB WHITE QUAIL; OPEN SEASON;
BAG LIMITS; SHOOTING PRESERVES; SPECIAL REGULATIONS

5 June 1956

The Wildlife Resources Commission does not have statutory authority to provide special open season limits and special bag limits for privately owned hunting preserves which have been stocked with quail.

WILDLIFE RESOURCES COMMISSION; FISHING LICENSES; TEMPORARY ACT
AUTHORIZING RESIDENT SERVICEMEN TO FISH WITHOUT LICENSE

15 May 1956

World War II is officially over, and the provisions of Chapter 647, Session Laws of 1945, authorizing resident servicemen of this State to fish without a license, are no longer in effect.

WILDLIFE RESOURCES COMMISSION; FISH AND FISHERIES; RIVERS AND
STREAMS; OBSTRUCTING PASSAGE OF FISH IN STREAMS; WATERS
SUBJECT TO JURISDICTION OF WILDLIFE RESOURCES COMMISSION

28 October 1955

G. S. 113-251, relating to obstructing the passage of fish in streams, as the same appears in Volume 3A of the General Statutes has not been repealed.

WILDLIFE RESOURCES COMMISSION; WILDLIFE PROTECTORS
ARE NOT PEACE OFFICERS

26 October 1955

Wildlife protectors are by statute, G. S. 113-91(d) and 113-41, clothed with some of the powers and duties of peace officers, but they are not peace officers and are not within the purview of Chapter 58, Laws of 1955.

LOTTERY LAWS; SHOOTING FOR BEEF

29 August 1955

It is not a violation of the gambling laws of this State for a person to engage in a deer shoot.

GAME LAWS; AUTHORITY OF WILDLIFE RESOURCES COMMISSION
TO PRESCRIBE OPEN SEASON ON DOE DEER

7 July 1955

The Wildlife Resources Commission has no authority to provide for an open season on doe or female deer.

WATERS; PRIVATE PONDS; PUBLIC WATERS; MUNICIPAL RESERVOIR

5 April, 1955

Whether or not the municipal water reservoir of Gastonia would constitute private ponds or public waters under the statute and definitions provided in the rules of the Wildlife Resources Commission is doubtful.

**FEDERAL GAME LAWS; ARRESTS FOR VIOLATION OF; PERSON ARRESTED TO BE
TAKEN BEFORE NEAREST UNITED STATES COMMISSIONER**

3 August 1954

Employees of the Forest Service of the United States must take violators of game laws before the nearest United States commissioner. A State Refuge Manager who holds a commission from the United States Government authorizing him to make arrests for the violations of laws relating to national forests should also take the offenders before the nearest United States commissioner. Title 16, Section 559, U.S.C.A.

**DIGEST OF
OPINIONS TO DEPARTMENT OF ARCHIVES
AND HISTORY**

ZEBULON BAIRD VANCE MEMORIAL COMMISSION; H. B. 221

23 February 1955

The Zebulon Baird Vance Memorial Commission continues to function if H. B. 221 is enacted. The power of eminent domain given the Department of Conservation and Development by H. B. 221 could not be used to acquire title to the property by the Commission or the Department of Archives and History.

**DIGEST OF
OPINIONS TO BURIAL ASSOCIATION
COMMISSION**

BURIAL ASSOCIATIONS; LIMITATION ON OPERATING EXPENSES

13 September 1955

A burial association may spend for operating expenses thirty per cent (30%) of the total assessments collected plus thirty per cent (30%) of the net income carried upon investment of surplus funds in any one calendar year.

**BURIAL ASSOCIATIONS; EMPLOYMENT OF COUNSEL BY
BURIAL ASSOCIATION COMMISSION**

10 November 1954

A State agency which is supported entirely by funds other than State funds is authorized to employ counsel without approval of the Governor and Attorney General.

**BURIAL ASSOCIATIONS; BURIAL OF MEMBER BEYOND TERRITORY
SERVED BY OFFICIAL FUNERAL DIRECTOR**

22 September 1954

Under the Mutual Burial Association Law where a director is designated to perform funeral services outside the normal territory of a mutual burial association the outside director is to be paid the full benefits under the burial insurance certificate, and the secretary-treasurer of the burial association has no right to retain any portion of these benefits.

**DIGEST OF
OPINIONS TO BOARD OF EMBALMERS AND
FUNERAL DIRECTORS**

**EMBALMERS AND FUNERAL DIRECTORS; APPOINTMENT
OF OFFICERS TO THE BOARD**

27 July 1954

The statute requiring the members of the State Board of Embalmers and Funeral Directors to be elected at the June meeting of the N. C. Funeral Directors and Burial Association, Inc., is not a mandatory requirement but a statutory requirement, and the annual time of meeting having been changed to the month of May the election of such officers in May is legal and valid.

DIGEST OF OPINIONS TO DEPARTMENT OF MOTOR VEHICLES

MOTOR VEHICLES; DRIVERS' LICENSES; OUT-OF-STATE CONVICTIONS;
PERIOD OF SUSPENSION OR REVOCATION

18 May 1956

The Department of Motor Vehicles has the authority to either suspend or revoke the driver's license of a resident of this State who has been convicted of drunken driving in another state. If the Department chooses to revoke the license, the period of revocation must be one year. If the Department chooses to suspend the period of suspension may not exceed one year and may be less than one year.

MOTOR VEHICLES; DRIVER'S LICENSE; UNSATISFIED JUDGMENT; JUDGMENT
AGAINST SERVICEMAN; SOLDIERS' AND SAILORS' CIVIL
RELIEF ACT, EFFECT OF

16 May 1956

A judgment obtained in violation of the Soldiers' and Sailors' Civil Relief Act, 50 USCA App. Section 520, is voidable and not void. The judgment remains valid until vacated and the Department must consider the judgment as valid under the Financial Responsibility Act.

DIPLOMATIC IMMUNITY

9 May 1956

The ancient law of nations granting diplomatic immunity to foreign ambassadors and ministers and their official households is still in force and effect and is now expressed in U. S. C. A. Title 22, Section 252, and such persons are not subject to either civil or criminal arrest.

MOTOR VEHICLES; RULES OF THE ROAD; SPEED LIMITS; SCHOOL BUSES;
SCHOOL ACTIVITIES

13 April 1956

Activities Busses owned and operated by the public schools of the State are subject to the 35 m. p. h. speed limit.

**MOTOR VEHICLES; DEALERS AND MANUFACTURERS LICENSING LAW;
DEFINITION OF "SALESMAN"**

6 April 1956

An individual who furnishes names of prospective buyers to a motor vehicle dealer, and who receives from the dealer the sum of \$25 for each prospect who purchases a new car within thirty days, but who does not contact the prospective purchaser himself or make any effort to sell an automobile, is not a "salesman" within the meaning of the Dealers and Manufacturers Licensing Law.

**MOTOR VEHICLES; DEALERS AND MANUFACTURERS LICENSING LAW;
NEWSPAPER ADVERTISING SALE OF "NEW MOTOR VEHICLES"
BY NON-FRANCHISED DEALERS**

6 April 1956

It is not unlawful for a newspaper to accept classified advertising from a non-franchised automobile dealer, to the effect that said dealer has new or unused motor vehicles for sale.

**MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT OF 1953; FORM OF BOND
FILED; AVAILABILITY OF INFORMATION TO OTHER PARTIES**

3 April 1956

Section 20-279.9 of the North Carolina General Statutes provides that an individual may file a personal bond, with two individual sureties, as fulfillment of the security requirement under the Financial Responsibility Act. The information contained on personal bonds filed under Section 20-279.9 is not confidential, and the Department of Motor Vehicles may make such information available to members of the general public.

**MOTOR VEHICLES; DRIVER'S LICENSE; RESTORATION OF LICENSE;
MENTAL HOSPITAL PATIENT**

21 March 1956

Section 20-9 (d) of the North Carolina General Statutes provides that one "who has been previously adjudged insane or an idiot, imbecile, grand mal epileptic, or feeble-minded," and who at the time of applying for a driver's license has not been restored to competency by judicial decree or released from a mental hospital upon certificate of the superintendent that such person is competent, shall not be licensed to operate a motor vehicle by the Department of Motor Vehicles. It is not a sufficient certificate from the superintendent of a mental hospital that the former

patient is in his opinion "competent to drive a motor vehicle." Rather, the certificate of competency which the statute contemplates that the superintendent will give has reference to general mental competency of that individual, and not merely the individual's competency to operate a motor vehicle. It is sufficient under this statute for the superintendent to certify that "in his opinion the former patient is now competent."

CRIMINAL LAW; CONCEALED WEAPON; OUT-OF-STATE PATROLMAN

19 March 1956

A police officer of another state is not entitled to carry a concealed weapon in North Carolina.

MOTOR VEHICLES; OVERLOADING; AUTHORITY OF OFFICER,
UNDER G. S. 20-118.1, TO WEIGH VEHICLE

7 March 1956

A State Highway Patrolman has no authority, under G. S. 20-118.1, to require that a vehicle which has been stopped for an overloading violation go beyond the two-mile limit in order to be weighed; however, there is nothing in the statute which would prohibit the driver of the vehicle in question to proceed voluntarily to a weight station which is located more than two miles distant. And if the driver of such a vehicle voluntarily goes beyond the two-mile limit, and if the vehicle was found to be overloaded, the penalties prescribed by G. S. 20-96 and G. S. 20-118 are applicable.

MOTOR VEHICLES; TITLE AND REGISTRATION; REGISTERING VEHICLES FOR
"JOINT TENANTS WITH RIGHT OF SURVIVORSHIP"; AUTHORITY OF
DEPARTMENT TO TRANSFER TITLE AND REGISTRATION
TO SURVIVING OWNER

10 February 1956

If a motor vehicle is registered in the names of more than one person "as joint tenants with right of survivorship," the Department of Motor Vehicles does not have authority to transfer title and registration of the vehicle to the "surviving owner" simply upon the basis of this form of registration. Survivorship in joint tenancy, in both real and personal property, has long been abolished in this State by statute; however, the right to survivorship in personalty can be established by contract between the parties. The Department of Motor Vehicles has authority, in its discretion, to accept application for registration of motor vehicles in the name of two or more individuals with a notation of "survivorship" as being some evidence that the parties have contracted for such right of survivorship. However, upon the death of one of the owners title and registration should not be transferred to the surviving owner without more specific evidence that the parties have so contracted.

**MOTOR VEHICLES; DRIVERS' LICENSES; MISCELLANEOUS; SUFFICIENCY OF
NOTICE OF SUSPENSION OR REVOCATION**

10 February 1956

Notices of revocation or suspension of drivers' licenses issued by the Department of Motor Vehicles do not have to be signed personally by the Commissioner of Motor Vehicles. Such notices may be signed by duly authorized agents or employees of the Department.

**MOTOR VEHICLES; DRIVERS LICENSES; DRUNKEN DRIVING; TWO
CONVICTIONS; OFFENSES PRIOR TO FIRST CONVICTION**

17 November 1955

A driver is arrested on a charge of drunken driving. The following day he is again arrested on a similar charge. He is tried and convicted on the first charge at a subsequent date and is later tried and convicted on the second charge. His driver's license should be revoked for three years for a second conviction of drunken driving.

**MOTOR VEHICLES; DRIVERS LICENSES; DRUNKEN DRIVING;
CONVICTION IN FOREIGN COUNTRY**

16 November 1955

Under G. S. 20-23 the Department of Motor Vehicles is authorized to suspend or revoke the driver's license of a resident of this State upon receipt of notice of conviction of such person in another "State" of any offense which, if committed in this State, would be grounds for suspension or revocation; but a conviction in Canada is a conviction in a foreign country and not in another "State" within the meaning of G. S. 20-23, which has reference to one of the other forty-seven States within the United States, and therefore the Department is not authorized to revoke a driver's license on the basis of receiving notice of a drunken driving conviction in Canada.

MOTOR VEHICLES; EQUIPMENT; LIGHTS ON HORSE DRAWN VEHICLES

7 November 1955

The provisions of the motor vehicle laws relating to lights apply to horse drawn carts. G. S. 20-129 (f).

**MOTOR VEHICLES; DRIVER'S LICENSES; NOTICES OF
SUSPENSION AND REVOCATION**

7 November 1955

Orders of revocation and suspension of drivers' licenses should be issued in the name of the Commissioner of Motor Vehicles.

SCHOOLS; BUSES; AUTHORITY TO USE FOR SCHOOL BUS DRIVER TRAINING

3 October 1955

Local school boards may authorize the use of school busses to transport students attending a school bus driver training class conducted by the N. C. Department of Motor Vehicles, but the local board may not authorize use of a public school bus for such purpose where the round trip mileage exceeds 25 miles, nor may a public school bus be taken out of the State of North Carolina.

MOTOR VEHICLES; EQUIPMENT; DIRECTIONAL SIGNALS; SCHOOL BUSES

6 September 1955

The Department of Motor Vehicles may approve any mechanical device which in its opinion is sufficient to give the turn signal required by G. S. 20-154.

**MOTOR VEHICLES; TITLE AND REGISTRATION; COMMON CARRIERS OF
PASSENGERS; 3% GROSS RECEIPTS TAX; TAX APPLICABLE
TO EXPRESS HAULED BY BUSES**

2 September 1955

The three per cent gross receipts tax applicable to common carriers of passengers, under G. S. 20-87 (a) applies to gross revenue received by such carriers for hauling incidental amounts of express. The statute makes no distinction between passenger revenue and other revenue derived from operation of vehicles by common carriers of passengers.

**MOTOR VEHICLES; TITLE AND REGISTRATION—FOR HIRE; INCOME FROM
INTERSTATE MOVEMENTS; TRUCKS LICENSED IN NORTH CAROLINA**

1 August 1955

A North Carolina common carrier whose vehicles are registered in this State must pay a tax under G. S. 20-88 (e) not only on revenue received from intrastate commerce in this State but also on a proportionate part

of revenue received from interstate commerce originating in, terminating in, or passing through this State, the proportionate part to be computed under the provisions of G. S. 20-88 (e).

**MOTOR VEHICLES; EQUIPMENT; LIGHTS ON VEHICLE
OPERATED IN DAYLIGHT HOURS**

28 July 1955

Lights and reflectors specified by G. S. 20-129.1 must be installed on any vehicle which is operated on a highway between one-half hour after sunset and one-half hour before sunrise, or at any other time when any person on the highway at a distance of 200 feet is not clearly discernible.

**INDUSTRIAL COMMISSION; COSTS; AUTHORITY OF INDUSTRIAL COMMISSION TO
' TAX COSTS AGAINST STATE AGENCIES IN TORT CLAIMS PROCEEDINGS**

21 July 1955

Under the provisions of G. S. 143-291.1, as enacted in Section 2, Chapter 1102, Session Laws of 1955, the Industrial Commission does not have authority to tax costs in a tort claims proceeding against a State agency in which a final decision was rendered denying the claim. The State agency in such a case is neither directed nor authorized to pay costs taxed against it by the Industrial Commission.

In a case in which an appeal is pending, the State agency is not required, under the provisions of G. S. 143-291.1, to pay costs which have been taxed against it, prior to final determination of the case on appeal.

**MOTOR VEHICLES; DRIVER'S LICENSES; OPERATION AFTER REVOCATION;
MINIMUM ADDITIONAL PERIOD**

19 July 1955

When an operator whose license is in a state of suspension or revocation is found driving a motor vehicle on the highways of the State after July 1, 1955, it is mandatory that the Department of Motor Vehicles add to the period of suspension or revocation then in effect an additional period of suspension of revocation, as the case may be, of one year for the first offense, three years for the second offense, and a permanent period for a third or subsequent offense.

MOTOR VEHICLES; TITLE AND REGISTRATION; FEES;
COMMON CARRIERS OF PASSENGERS

4 February 1955

The test of whether receipts of a carrier of passengers are subject to the 6% tax imposed by G. S. 20-87 is the nature of the carrier's operation, in the type of passengers from whom the revenue in question is derived. A common carrier must pay the 6% tax on revenues received from industrial workers traveling between home and work on commutation tickets. It must also pay the tax on receipts from charter-party operations of a common carrier bus. If the vehicle is in fact not a "common carrier" vehicle but is a "for hire" vehicle, the fact that the owner procured "common carrier" license plates for it does not subject him to the 6% tax on gross receipts from it.

MOTOR VEHICLES; ARREST WITHOUT WARRANT; DRIVING WITHOUT LICENSE

1 December 1954

G. S. 20-183 does not apply to violations of the driver's license law. Therefore, an arrest without a warrant for driving without a license is not authorized by that statute. G. S. 20-49 authorizes a member of the Highway Patrol to arrest without a warrant for any violation in his presence of any law relating to the operation of vehicles or the use of the highway. This does not apply where the defendant did not drive in the presence of the officer.

MOTOR VEHICLES; OVERLOADING; OVER LICENSE LIMIT;
NON-RESIDENTS; PENALTIES

12 November 1954

A non-resident corporation operating a tractor-trailer in North Carolina under the reciprocity provisions of G. S. 20-83 is liable for the penalties set forth in G. S. 20-118 when such vehicle is loaded in excess of the weight for which license has been procured.

MOTOR VEHICLES; DRIVER'S LICENSES; HABITUAL USE OF NARCOTIC DRUGS;
RESTORATION OF LICENSE

12 November 1954

A person whose driver's license has been revoked because of his having been committed to an institution for treatment of habitual users of narcotic drugs may not have his license restored until there is filed with the Department of Motor Vehicles a judicial order or decree stating that he is

"competent" or a certificate from the person in charge of the hospital stating that he is "competent." "Competent" means that he is no longer "an habitual user of narcotics."

MOTOR VEHICLES; STATE HIGHWAY PATROL; ARREST OF FOREIGN DIPLOMATS

10 November 1954

Foreign ambassadors, ministers and consuls, as well as the members of their official households, families, and servants, are exempt from arrest. Members of Congress are exempt only from arrest in civil cases.

**MOTOR VEHICLES; TITLE AND REGISTRATION; THIRTY-DAY PERMIT;
APPLICABILITY TO WAKE COUNTY**

11 October 1954

The statute providing for a 30-day permit to operate in North Carolina under G. S. 20-83 is inapplicable if the operation is in Wake County.

**MOTOR VEHICLES; TITLE AND REGISTRATION; EFFECT OF
FAILURE TO PAY CHECK GIVEN FOR PURCHASE PRICE**

5 October 1954

This opinion discusses at length various aspects of passage of title to an automobile as a result of a cash transaction where payment is made by check and the check is dishonored. This opinion discusses the duty of the Department of Motor Vehicles in the issuance of registration for such vehicles.

**MOTOR VEHICLES; DRIVERS' LICENSES; EXPIRATION; EXHIBITING REISSUED
LICENSES OBTAINED WITHIN 30 DAYS; APPLICATION TO NONRESIDENTS**

27 September 1954

A nonresident holding an expired operator's license from a state with whom North Carolina practices reciprocity is entitled to the defense afforded by G. S. 20-7 (n) of producing in court a valid license issued within 30 days after the expiration of his prior license.

**MOTOR VEHICLES; OVERLOADING; DISCRETION;
HAULING OF SEALED GOVERNMENT CARGOES**

14 September 1954

A carrier hauling a sealed Government cargo is not entitled to relief from overloading penalties.

**MOTOR VEHICLES; DRIVERS LICENSES; DRUNKEN DRIVING;
TWO CONVICTIONS ON SAME DAY**

27 August 1954

When a motor vehicle operator is charged on two separate occasions with drunken driving and the two cases are consolidated for trial and the operator is convicted of both charges, the Department of Motor Vehicles should revoke his license for a period of three years.

**MOTOR VEHICLES; DRIVERS' LICENSES;
G. S. 20-16.1; 35 M. P. H. ZONE**

19 August 1954

The Department of Motor Vehicles is authorized to suspend for thirty days the license of an operator convicted of exceeding 70 m. p. h. in a 35 m. p. h. zone.

**MOTOR VEHICLES; ARREST WITHOUT WARRANT; DRUNKEN
PEDESTRIANS ON THE HIGHWAY**

17 August 1954

It is considered inadvisable for the Highway Patrol to arrest drunken pedestrians on our highways unless, in addition to being drunk, they are also disturbing the peace.

MOTOR VEHICLES; EQUIPMENT; REAR LIGHTS; WIG-WAG LIGHTS

4 August 1954

A wig-wagging red light designed to illuminate and wig-wag on the rear of a vehicle when the brakes of the vehicle are applied is legal if it meets the construction requirements of G. S. 20-129 (d) and is approved by the Commissioner. Otherwise, such a device is prohibited by the clear implication of G. S. 20-129 and G. S. 20-130.

**MOTOR VEHICLES; DRIVERS' LICENSES; EXCEPTIONS;
MAIL CARRIER USING PRIVATE VEHICLE**

27 July 1954

A mail carrier delivering mail in his private automobile pursuant to a contract with the United States is not required to have a North Carolina operator's license for this operation. The operation would include travel to pick up the mail and to return to his home upon completion of delivery. Of course, any personal use of the vehicle would require that the driver have a license.

DIGEST OF OPINIONS TO COMMISSIONER OF REVENUE

TAXATION; GASOLINE; FUEL USE TAX; REFUND OF EXCESS; VIRGINIA CARRIERS

21 June 1956

G. S. 105-449.38 of the highway fuel use tax authorizes certain refunds to motor carriers for certain excess amounts of motor fuel tax paid to this State. Virginia motor vehicle carriers engaged in the transportation of property are entitled to such a refund at the rate of 7c per gallon providing they comply with the conditions of the statute.

TAXATION; FRANCHISE TAXES; DOING BUSINESS CONSIGNMENT SHIPMENTS

19 June 1956

True consignment transactions between an out-of-state consignor and an in-state consignee do not constitute "doing business" on the part of the out-of-state consignor, for purposes of the franchise and income tax articles.

TAXATION; SALES; SALE, WHAT IS; DEALERS IN USED EQUIPMENT

12 June 1956

Persons who, as a course of practice, attend auction sales of used farm equipment and resell same should register with the Sales Tax Division of the Department of Revenue and pay sales tax upon such resales.

TAXATION; FRANCHISE TAXES; CHARITABLE TRUST

22 May 1956

A charitable trust does not constitute a charitable corporation for the purpose of the income tax exemption statute. Nor is it an organization for the purpose of obtaining an exemption from intangibles tax. However, the trust is not subject to the franchise tax, and contributions to the trust are deductible for income tax purposes.

TAXATION; INTANGIBLES; EXEMPTIONS; CHARITABLE TRUST

22 May 1956

A charitable trust does not constitute a charitable corporation for the purpose of the income tax exemption statute. Nor is it an organization

for the purpose of obtaining an exemption from intangibles tax. However, the trust is not subject to the franchise tax, and contributions to the trust are deductible for income tax purposes.

TAXATION; INCOME TAXES; DEDUCTIONS; INCOME RECEIVED FROM TRUST

17 April 1956

A resident beneficiary entitled to receive the income of an active trust, the corpus of which is composed of an undivided interest in real estate lying in a foreign State, does not have an investment in real or tangible property in such foreign State nor an established place of business in such foreign State within the meaning of the income tax article of the Revenue Act.

TAXATION; SALES EXEMPTIONS; CIVIL AIR PATROL

10 April 1956

Sales of tangible personal property to the State Civil Air Patrol are exempt from the sales tax as being sales to a State agency.

**TAXATION; INCOME; DEDUCTIONS; CANDIDATE FOR PUBLIC OFFICE;
FILING FEE**

13 April 1956

The filing fee required of a candidate for public office is not deductible for income tax purposes.

**TAXATION; INCOME; DEDUCTION; NON-RESIDENT
EARNING INCOME IN NORTH CAROLINA**

21 March 1956

(1) Any non-resident individual earning income in North Carolina is entitled to all allowable deductions under Section 322 to the extent that such deductions are connected with income arising from sources within the State, that is, such deductible expenses as are incurred in earning the income in this State.

(2) A non-resident individual owning an established business or who is a partner in an established business in this State is allowed deductions under Section 322 to the extent that they are connected with income earned in this State, *and in addition*, such individuals are entitled to all *other* deductions allowed in the Revenue Act. Such other deductions are authorized on a pro rata basis; that is in the proportion that the non-resident individual's gross income earned within this State bears to his total gross

income for the same period earned both within this State and in his state of residence. In substance, this means that the non-resident individual owning an established business or who is a partner in an established business in this State is entitled to all deductions which are connected with income earned in this State, and in addition, is authorized non-business deductions in the proportion that his gross income earned within this State bears to the total gross income earned both in North Carolina and in his resident state.

(3) A non-resident individual earning income within this State is entitled to the exemptions authorized under Section 324 in the proportion that his gross income earned within this State bears to the total gross income earned both within and without this State; provided, that a non-resident individual who claims no deduction because of income earned outside North Carolina is entitled to the full exemptions provided in Section 324.

TAXATION; SALES; BUILDING MATERIALS; MASONIC LODGE BUILDING

14 March 1956

Purchases of building materials for use in the construction of a lodge temple for a Masonic Lodge are subject to the sales tax.

TAXATION; LICENSE; SERVICE STATION LICENSE; MINIMUM TAX; UNINCORPORATED COMMUNITY

9 March 1956

For the purpose of determining the applicable rate for privilege license taxes based on community population, an unincorporated community, point or collection of people having a geographical name by which it may be generally known and is so generally designated constitutes an unincorporated place or town. Businesses located in such an unincorporated place or town are taxable at the same rate as would be applicable if they were located in an incorporated town of comparable size.

TAXATION; DEDUCTIONS; APPORTIONMENT IN THE CASE OF A NON-RESIDENT PARTNERSHIP

21 March 1956

Section 322 (11) of the Revenue Act relating to allocation of deductions in the case of non-resident individuals, provides that the proper apportionment of deductions with respect to sources of income within and without the State shall be determined under rules and regulations prescribed by the Commissioner of Revenue. Under this same section non-resident individuals earning income in North Carolina are entitled to take all deductions to the extent connected with income earned in this State. There

are no statutory formulas governing apportionment of deductions for non-resident individuals, and Section 311 of the Revenue Act which contains certain formulas applicable only to foreign corporations does not apply to non-resident individuals. Therefore, a non-resident individual is not entitled, as a matter of right, to use a salary ratio formula in computing his apportionment of deductions on income earned in this State simply because the use of this formula is authorized for foreign corporations under Section 311 of the Revenue Act.

TAXATION; INCOME; ALLOCATION; DOING BUSINESS;
FOREIGN CORPORATION; SALES OFFICE

5 March 1956

Maintenance in this State by a foreign corporation of a sales office which actually handles customer complaints, makes investigations thereof, and takes orders, constitutes doing business in North Carolina. Such a method of operation is to be distinguished from the maintenance of an office as a headquarters for traveling salesmen and solely for their convenience.

TAXATION; INCOME; DEDUCTIONS; DEDUCTIBILITY OF STOCK DIVIDENDS UNDER
G. S. 105-147 (5) RECEIVED BY A COMMON TRUST FUND FROM CORPORATION
PAYING INCOME TAX TO NORTH CAROLINA

23 February 1956

A taxpayer is not entitled to the stock dividend credit authorized by G. S. 105-147 (5) on amounts received from a common trust fund, for the reason that such dividend credit is available only to the stockholder. The common trust fund itself is the stockholder and not the taxpayer who is the distributee from the common trust fund. One receiving distributions from a regulated investment company is entitled to take the stock dividend credit under G. S. 105-147 (5), but the ordinary common trust fund is not a regulated investment company within the meaning of the statute.

TAXATION; INCOME; DEDUCTIONS; EXPENSES IN WRITING A BOOK

15 February 1956

An individual who writes a book with the expectation of making money on the venture is entitled to deduct all the "ordinary and necessary expenses" incurred in writing such book, such as amounts paid for stenographic assistance, travel in connection with research on the book, copy-right costs, etc.

**TAXATION; SALES; RENTAL CONTRACTS; CONTRACTS PRIOR TO JULY 1, 1955;
NECESSITY FOR PAYING TAX PRIOR TO THAT DATE**

2 February 1956

Personal property rented or leased, under a contract entered into prior to July 1, 1955, in such a manner that the rental or lease is subject to the single article maximum tax limitation in force prior to that date remains subject to the single article limitation regardless of whether the maximum tax of \$15.00 was paid before or after July 1, 1955.

TAXATION; INCOME; ALLOCATION; RESEARCH LABORATORY

11 January 1956

If a foreign corporation has no activity in North Carolina except the maintenance of a small research laboratory, such corporation is required to pay income taxes to North Carolina under the gross receipts formula. Since it would have no gross receipts in this State, it does not owe the State any income taxes.

**TAXATION; SALES; RENTAL CONTRACTS; REPLACEMENT OF ARTICLE;
EXTENSION OF LEASE**

3 January 1956

For purposes of applying the single article limitation applicable to the sales tax, the period of time for which a contract of rental or lease is to run is immaterial.

**TAXATION; INHERITANCE; FEDERAL EMPLOYEES' GROUP LIFE INSURANCE
COMPANY; INCLUSION OF PROCEEDS IN GROSS ESTATE**

21 November 1955

Death benefits paid by the Federal Employees Group Life Insurance Company are includable in the gross estate of the deceased employee for inheritance tax purposes.

**TAXATION; INTANGIBLES TAX; SHARES OF STOCK; PERCENTAGE TAXABLE;
CORPORATION NOT PAYING FRANCHISE TAX**

16 November 1955

In order for the stock of a corporation to qualify for the limited exemption from the intangibles tax contained in G. S. 105-203, it is essential that the corporation pay a franchise tax under Schedule C of the Revenue Act.

TAXATION; JUSTICES OF THE PEACE; QUALIFICATION FEE**16 November 1955**

The \$7.50 qualification fee imposed by Section 2 of Chapter 910, S. L. 1955, is to be collected by Clerks of the Superior Court only from those Justices of the Peace who are appointed by the resident judge pursuant to the provisions of the above-cited Act.

TAXATION; INCOME; CIVIL AERONAUTICAL BOARD AS SUCCESSOR REGULATORY AGENCY OF THE INTERSTATE COMMERCE COMMISSION**4 November 1955**

For purposes of G. S. 105-136 (Section 312 of the Revenue Act), the Civil Aeronautics Board is a "Successor Federal regulatory agency" to the Inter-State Commerce Commission, and a public service corporation regulated by the Civil Aeronautics Board, and which is required by that Board to maintain records according to a prescribed accounting system, is required to report its net income for State tax purposes in accordance with the accounting system prescribed by the Federal regulatory agency.

TAXATION; INCOME; DEDUCTIONS; CONTRIBUTIONS**4 November 1955**

An income tax deduction is not available under G. S. 105-147 (9) to donors making contributions to a foundation organized and operated to promote and encourage athletic events, charging admission to games or contests, and further authorized to operate soda fountains and to carry on "all or any business of merchants," although organized and operated as a non-profit organization, whose net profits if any will be distributed to "charitable organizations."

TAXATION; SALES; EXEMPTIONS; SALES TO NATIONAL BANKS; SALES TO CONTRACTOR PERFORMING CONTRACT WITH NATIONAL BANK**26 October 1955**

Sales of tangible personal property to a national bank are not subject to the 3% sales tax, inasmuch as a national bank has been established, under the Federal law, as a Federal instrumentality, and not subject to such a tax under applicable Federal law. Sales made to a contractor, of building materials going into a national bank building under a cost-plus contract, and sales made to independent contractors of building materials going into a national bank under a general contract for a fixed sum, are

subject to the North Carolina sales tax, under authority of decisions by the United States Supreme Court. G. S. 105-169 (e) provides that the sales tax shall not apply to gross receipts from sales of tangible personal property which the State is prohibited from taxing under the Constitution or laws of the United States.

**TAXATION; INCOME; DOING BUSINESS; SALES FACTOR; SHIPMENTS FROM
PUBLIC WAREHOUSE; INTERSTATE SHIPMENTS**

24 October 1955

A foreign corporation maintains an inventory of goods in a public warehouse in North Carolina. The goods are shipped from the inventory to retailers located both within and without this State. The foreign corporation is doing business in North Carolina for income tax purposes and the sales made from the inventory must be included in the sales factor, whether those sales are to merchants located in North Carolina or outside of North Carolina.

**TAXATION; SALES; SALES OF TANGIBLE PERSONAL PROPERTY TO INTERSTATE
CARRIERS; DELIVERY IN STATE**

21 October 1955

The sale of cross-ties and switch-ties to a common carrier for use by the railway is subject to the sales tax, the delivery of the articles of tangible personal property being made to the purchaser as such, rather than to a common carrier as such, for shipment in interstate commerce.

**TAXATION; INCOME; NON-RESIDENT MILITARY PERSONNEL; APPLICABILITY OF
SOLDIERS' AND SAILORS' CIVIL RELIEF ACT**

13 October 1955

Compensation for military services received by non-residents of the State of North Carolina who are stationed in North Carolina pursuant to military orders and who have not become citizens of North Carolina is not subject to North Carolina income tax by virtue of Section 464, Title 50, Appendix U.S.C.A., and Section 574, Title 50, Appendix U.S.C.A.

**TAXATION; INCOME TAX; DOING BUSINESS;
PLACING GOODS ON CONSIGNMENT**

5 October 1955

An out-of-state manufacturer who places goods on consignment with a dealer in North Carolina for sale by the consignee on the consignee's

account is not "doing business" in this State for the purposes of income-franchise taxation.

**TAXATION; FRANCHISE TAX; DOING BUSINESS;
PLACING GOODS ON CONSIGNMENT**

5 October 1955

An out-of-state manufacturer who places goods on consignment with a dealer in North Carolina for sale by the consignee on the consignee's account is not "doing business" in this state for the purpose of income-franchise taxation.

**TAXATION; SALES; EXEMPTIONS; SALES OF FUEL TO FARMERS;
GREENHOUSE OPERATOR**

22 August 1955

A person engaged in the business of growing flowers in a greenhouse is a farmer for purposes of the exemption contained in G. S. 105-169 (b1) and sales of fuel to such persons for farm purposes other than preparing food, heating dwellings and other household purposes are exempt from the sales tax.

TAXATION; GASOLINE TAX; DIESEL FUEL; EFFECTIVE DATE OF 1955 LAW

18 August 1955

The power of the Commissioner of Revenue to make regulations with reference to the 1955 Special Fuels Tax Act does not authorize him to change the effective date of the statute.

**TAXATION; LICENSE; TOURIST HOMES AND TOURIST CAMPS;
SIMILAR PLACES; BEACH COTTAGES**

11 August 1955

A beach cottage which is held for rental purposes, and which is so advertised, and which is rented to different persons for varying periods of time for vacation purposes, is a place similar to a tourist home or tourist camp and the tourist home or tourist camp license tax is applicable with respect thereto.

TAXATION; EXEMPTIONS; SALES; HOTEL GUEST ROOM SUPPLIES NOT EXEMPT

4 August 1955

Sales of merchandise necessary in equipping and servicing guest rooms of a motel or hotel would not be exempt from the sales tax merely because the hotel or motel room rental is subject to a 3% tax.

**TAXATION; INCOME; ALLOCATION; DOING BUSINESS;
INSTALLATION OR ERECTION**

4 August 1955

When a foreign corporation sells equipment and machinery to customers in this State and installation thereof under the supervision of the selling corporation is optional with the North Carolina customer, such installation is not an integral part of a sale, and installation work would constitute doing business in this State for income tax purposes.

**TAXATION; SALES; USE; SALES TO OUT OF STATE RETAILERS
ACCEPTING DELIVERY IN NORTH CAROLINA**

27 July 1955

Sales and use tax regulation 18(b) permits out of State retailers purchasing and accepting delivery of goods in this State to pay the sales tax at only the wholesale rate upon complying with the provisions of said regulation.

**TAXATION; SALES; USE TAX; CASH DISCOUNT; WHAT CONSTITUTES
CASH DISCOUNT; SALE OF CARS BELOW LIST PRICE**

25 July 1955

When a motor vehicle dealer bargains with a purchaser to sell a car at less than list price, without any conditions attached, the mere fact that such dealer shows the difference between the list price and actual sales price as a "discount" on his invoice does not make such "discount" subject to the sales tax.

**TAXATION; LICENSE; MUTUAL TELEPHONE ASSOCIATIONS;
SECTION 168½ OF THE REVENUE ACT**

21 July 1955

The Randolph Telephone Membership Corporation is not subject to the license tax imposed by G. S. 105-102.1.

TAXATION; INHERITANCE; RECIPROCITY WITH MICHIGAN

21 July 1955

The North Carolina Inheritance Tax Article does not have a reciprocity provision except in connection with bequests to charities.

**TAXATION; LICENSE; TOURIST HOMES AND TOURIST CAMPS;
CHILDREN'S SUMMER CAMP; SECTION 126½**

19 July 1955

A children's summer camp is not subject to the license tax imposed on tourist homes and tourist camps.

**TAXATION; LICENSE; DEALERS IN HORSES AND MULES; ACCEPTING MULES AS
TRADE-INS ON TRACTOR PURCHASES; SECTION 115**

15 July 1955

A farm machinery and equipment dealer who accepts mules as trade-ins on part of the purchase price of farm equipment and machinery, and who somewhat promptly disposes of such mules at the most readily available market is not subject to the mule dealer's license tax imposed by G. S. 105-47 because such person is not engaging in the business of purchasing mules for the purpose of resale.

**TAXATION; FRANCHISE TAX; EXEMPTIONS; CAROLINA COUNTRY CLUB,
WAKE COUNTY, NORTH CAROLINA**

14 July 1955

The Carolina Country Club, Wake County, North Carolina is not subject to State income or franchise tax.

TAXATION; LICENSE; SECURITY DEALERS; PRIVATE WIRE

14 July 1955

A private wire from one office of a broker to another office of the same broker in a different city is not the type of private wire contemplated by Section 132 (d) of the Revenue Act imposing a higher license tax upon security dealers having certain types of private wires.

**TAXATION; INCOME; DEDUCTION; INVOLUNTARY LOSS;
RESIDENTIAL PROPERTY**

14 July 1955

A loss resulting from the foreclosure of a mortgage on a person's dwelling house occupied by such person as his residence is not deductible for income tax purposes.

**TAXATION; INCOME; DEDUCTIONS; CONTRIBUTIONS; EXCESSIVE
PARTNERSHIP CONTRIBUTIONS NOT DEDUCTIBLE BY
INDIVIDUAL PARTNER**

14 July 1955

When a partnership makes a contribution in excess of the maximum deductible amount of 5%, a partner may not claim such excess as a personal deduction.

**TAXATION; LICENSE TAX; RESTAURANTS AND DININGROOMS;
CHILDREN'S SUMMER CAMP; SECTION 127**

13 July 1955

Children's summer camps are not subject to the hotel license tax imposed by G. S. 105-60 or the restaurant license tax imposed by G. S. 105-62.

**TAXATION; LICENSE; HOTELS; CHILDREN'S SUMMER CAMP;
SECTION 126**

13 July 1955

Children's summer camps are not subject to the hotel license tax imposed by G. S. 105-60 or the restaurant license tax imposed by G. S. 105-62.

TAXATION; SALES; BUILDING MATERIALS; NATIONAL GUARD ARMORIES

12 July 1955

A sale of building materials to a contractor for use in the construction or repair of armories on land owned by the State or a municipality is exempt from the sales tax.

**TAXATION; SALES; BUILDING MATERIALS; SINGLE ARTICLE;
1955 AMENDMENT**

28 June 1955

A boiler purchased after July 1, 1955, is taxed at the 3% rate without any limitation on the amount of tax even though it was purchased to fulfill a contract entered into prior to July 1st.

**TAXATION; INCOME; ADMINISTRATION; COLLECTION FROM
DISSOLVED DOMESTIC CORPORATION**

27 June 1955

The procedure for the collection of State Income Taxes from a dissolved corporation is set forth in Section 923 of the Revenue Act.

TAXATION; LICENSE; HOTELS; YMCA AND YWCA BUILDINGS; SEC. 126

17 June 1955

A YMCA or YWCA which furnishes lodging to transients, irrespective of whether such transients are or are not members of such organization, is liable for the hotel license tax imposed under G. S. 105-60 (Section 126 of the Revenue Act).

**TAXATION; SALES; EXEMPTIONS; SALES TO CONTRACTOR FOR
HOSPITAL BUILDING**

16 June 1955

Sales of building materials to contractors to be used in the construction and repair work for a non-profit hospital are exempt from the sales and use taxes.

TAXATION; INHERITANCE; INSURANCE; PARTNERSHIP INSURANCE

15 June 1955

Payments of premiums by a partnership on cross-purchase partnership insurance policies are not deductible as ordinary and necessary expenses of the partners. Generally speaking, the proceeds of such a policy received on the death of a partner are not includable in the gross income of the beneficiary. The opinion also discusses the question of whether such proceeds are includable in the gross estate of the deceased partner for the purpose of determining inheritance taxes due on his death.

**TAXATION; GASOLINE TAXES; DISTRIBUTORS; USER WHO DOES
NOT DISTRIBUTE NOT QUALIFIED**

8 June 1955

In my opinion, the provisions of G. S. 105-430 and G. S. 105-434, authorizing the licensing of distributors of motor fuels, do not authorize the licensing of a corporation as a distributor when such corporation distributes no motor fuel but merely uses the same in the operation of its own fleet of trucks for its own corporate purposes. While it is true that the definition of distributor and the section levying the gasoline tax use language covering users, it is apparent from a consideration of the context that the "use" referred to is a use by a person in addition to selling and otherwise distributing gasoline. To interpret these sections otherwise would be to hold that every person in the State who uses gasoline could qualify as a licensed distributor of gasoline and this is clearly not the intent of the statute.

**TAXATION; GASOLINE TAX; EXEMPT SALES; SALES TO
PUBLIC SCHOOLS UNDER STATE CONTRACT**

25 May 1955

Under G. S. 105-449 the provisions for tax-exempt sales of gasoline for public school transportation purposes are limited to sales by persons, firms, or corporations holding a State contract therefor.

**TAXATION; SALES; USE TAX; FORT BRAGG RESERVATION;
HOUSE BILL No. 1041**

23 May 1955

There is serious doubt as to the constitutionality of a bill which forbids the collection of sales or use taxes for sales or uses occurring on a particular Army Reservation within the State, and requires refunds of such taxes if paid under protest, there being no such provision for similar sales made elsewhere in the State, including other Army Reservations, and no such provision for refund where the payment was not under protest. Such a bill also probably violates Article II, Section 29, forbidding a local law refunding monies legally paid into the public treasury. Article XIV, Section 3, requires that such refund be made pursuant to an appropriation.

TAXATION; GIFT; PARTNERSHIPS; ADMISSION OF NEW PARTNER

29 March 1955

A transfer to a new partner of a share of the existing assets of the partnership constitutes a taxable gift. Each case must be examined on its

facts to determine whether or not the transferring partner received consideration for the transfer.

**TAXATION; FRANCHISE TAX; EXEMPT CORPORATIONS; SUNDAY
SCHOOL OF THE SOUTHERN BAPTIST CONVENTION**

11 March 1955

The Sunday School of the Southern Baptist Convention is a religious or educational corporation not operated for profit and is exempt from the franchise tax and the income tax by Sections 213 and 314 of the Revenue Act.

**TAXATION; INCOME; SECTION 312; RAILROADS AND PUBLIC SERVICE
CORPORATIONS; OPERATING EXPENSES; TAXES**

10 March 1955

Section 312 of the Revenue Act incorporates by reference the standard accounting practices and classifications prescribed by the Interstate Commerce Commission and in effect in 1941 when this section was adopted by the Legislature. Subsequent changes by the Interstate Commerce Commission in its accounting practices or classifications may not be considered by the Department in computing the income tax of a corporation subject to Section 312. Although taxes are now considered an operating expense in the accounting practices and classifications prescribed by the Interstate Commerce Commission for motor carriers, the income tax liability of such carriers to the State must be determined by use of an operating ratio computed without reference to any such taxes. After the deduction for operating expense so determined is made, a further deduction for taxes paid in this State in the income year, other than income taxes, must be allowed.

TAXATION; SALES; USE TAX; REPAIR AND UPHOLSTERY SHOPS

4 March 1955

In my opinion, a reupholstering job should not be treated in its entirety as a sale for sales tax purposes. It is true that the customer specifies or may specify the type of upholstery and that different charges may be made depending on the type and quality of upholstery. However, the ordinary customer is not interested in simply purchasing cloth. He is primarily interested in having a piece of furniture reworked and refinished with all necessary work done to produce a finished, usable piece of furniture. Viewed in this light, I think an upholsterer should pay the use tax with respect to all materials used or consumed in an upholstery job, whether small or large, and that no sales tax would be applicable thereto. Of course, outright sales of materials where the upholsterer does not do the upholstery work would be subject to the sales tax.

TAXATION; SALES; SINGLE ARTICLE; GANG MOWERS; RANGER WAY

15 February 1955

The single article limitation of the sales tax does not apply to gang mowers and ranger way mowers. Of course, any single article contained in the gang would be entitled to the limitation.

TAXATION; GIFT; TRUSTS; FUTURE INTERESTS

14 February 1955

When there is a gift in trust for the benefit of A for life, and then to such person or persons to be appointed by A from a designated class, a gift tax is due even though there is a provision for termination and reversion to the settlor upon the occurrence of a condition, the occurrence of which is wholly or partly controlled by A, or upon A's living beyond a specified period.

TAXATION; INCOME; PENSION PLAN; CORPORATION

10 February 1955

When a corporation accumulates a Pension or Profit Sharing Fund for the benefit of its employee who makes no contribution to that Fund, the withdrawal by the employee of such benefits results in the receipt by him of compensation for services, and perhaps of interest, which amounts must be included in gross income of the employee.

TAXATION; LICENSE; LAND SURVEYOR; SECTION 109

7 February 1955

To be subject to the license tax imposed on "practicing land surveyors", a person must both survey areas and draw descriptions of land surveyed. If he does both of these things, the fact that he is exempt from the requirement of registration does not exempt him from liability for the license tax.

TAXATION; INCOME; DOMESTIC CORPORATIONS; DEDUCTIONS;
INCOME EARNED AND TAXED IN ANOTHER STATE

31 January 1955

A North Carolina company which manufactures in North Carolina and sells and installs furniture in another state and pays taxes on its income to such other state may deduct such income in determining its North

Carolina taxable income only if the company has an established plant or office in such state or an investment in property in such state. A trivial investment in property, such as an automobile used by a salesman in soliciting orders or a typewriter used by him in the business, is not sufficient to permit a deduction of the income for such orders.

**TAXATION; SALES; USE TAX; SALE BY NORTH CAROLINA
MANUFACTURER TO CONSUMER**

26 January 1955

A manufacturer who does not maintain a warehouse or store separate from his place of manufacturing is not liable for the sales tax but is liable for the collection and remittance to the State of the use tax imposed by the Revenue Act.

**TAXATION; LICENSE; INSURANCE AND INSURANCE COMPANIES; AGENTS;
LIABILITY FOR REGISTRATION FEES; G. S. 105-228.7
(SECTION 874 OF THE REVENUE ACT)**

24 January 1955

The liability for registration fees imposed with respect to insurance agents by Section 874 of the Revenue Act rests upon the agents and not upon the insurance companies being represented by the agents.

**TAXATION; INHERITANCE; DEDUCTIONS; BEQUEST FOR
MONUMENT IN EXCESS OF DEDUCTION**

21 January 1955

A decedent directs that a portion of her estate be used to provide a coping around her cemetery lot and to provide a suitable monument. By consent of the legatees and under a court order, a portion of the bequests is used to erect a memorial window in a church. The estate is entitled to a \$1,000 deduction for the cost of a monument. The remaining sum would be taxable in the gross estate of the decedent.

**TAXATION; INCOME; DIVIDENDS FROM DOMESTIC CORPORATIONS;
INTANGIBLES TAX; STOCK IN DOMESTIC CORPORATIONS**

18 January 1955

Where a North Carolina corporation does business in North Carolina and Mississippi, has a net income in Mississippi on which it pays that state an income tax, but loses so much in North Carolina that it has a net loss, such corporation nevertheless paying a dividend, the full amount of the

dividend is deductible in computing the stockholder's income tax liability to North Carolina and no part of the value of the stock is taxable under the Intangibles Tax law.

**TAXATION; INCOME; DEDUCTIONS; MAINTAINING
DEPENDENT IN INSTITUTION**

11 January 1955

Subsection 9½ of Section 322 of the Revenue Act, relating to maintenance of mental or physically defective dependents in institutions, provides a deduction for all persons except one class. The excepted class is married women who both (1) have separate and independent income and (2) are not entitled to an exemption of \$2,000.

**TAXATION; INCOME; CORPORATIONS; SALE FOR LIQUIDATION;
DISTRIBUTION TO STOCKHOLDERS**

10 December 1954

When a corporation adopts a liquidation plan and pursuant to that plan sells its property for a profit the corporation receives taxable income. When the corporation distributes its assets, including the profits of the sale, to its stockholders the stockholder receives taxable income to the extent that the distribution payment exceeds the income tax basis attributable to his share.

**TAXATION; INCOME; DEDUCTIONS; CONTRIBUTIONS;
LAKE JUNALUSKA ASSEMBLY**

1 December 1954

Contributions to Lake Junaluska Assembly, Inc., are deductible for income tax purposes under the provisions of Section 322 (9) of the Revenue Act.

**TAXATION; INCOME; BASIS; PROPERTY ACQUIRED BY GIFT IN
CONTEMPLATION OF DEATH**

1 December 1954

When property is acquired by gift and is later included for inheritance tax purposes in the gross estate of the donor as having been a gift in contemplation of death, the basis for determining gain or loss is the value of the property at the time of the gift in cases where the property increased in value between the time of purchase by the donor and the date of the gift.

TAXATION; INCOME; REAL PROPERTY; LIFE ESTATE AND REVERSION;
BASIS; PROPERTY ACQUIRED BEFORE JANUARY 1, 1921

30 November 1954

A devise to "A" for life and then to her children surviving her gives "A" a life estate with a contingent remainder in fee to her children and a reversion in fee in the heirs of the testator. A reversion is a present vested right so the heirs take title immediately upon the death of the testator. After the death of the life tenant leaving no children a sale by the holders of the reversion gives them taxable income measured by the difference between the sale price and the cost of their reversion. If the cost cannot be determined and the testator died before January 1, 1921, the taxable income is the difference between the sale price and the fair market price of the reversion on January 1, 1921.

TAXATION; INCOME; CORPORATIONS; UNION STATION

24 November 1954

A union station corporation is operating a "form of public service" and the Interstate Commerce Commission requires it to keep its accounts in accordance with that Commission's accounting classifications. Therefore, its income tax liability is determined by Section 312 of the Revenue Act.

TAXATION; INCOME; ADMINISTRATION; FEDERAL ASSESSMENT; EFFECT OF
READJUSTMENT OF YEAR BARRED BY FEDERAL STATUTE

26 October 1954

In order for a Federal redetermination of income to reopen a barred year under Section 334 of the Revenue Act, the Federal readjustment must be valid and legal under the Federal law.

TAXATION; SALES; CASKETS; ITEMIZATION ON UNDERTAKER'S BOOKS;
APPLICATION OF REGULATION No. 9

25 October 1954

When an undertaker itemizes his charges for tangible personal property and his services, sales tax is assessed only with respect to the tangible property, subject to the statutory limitation that a coffin or casket is exempt when such coffin or casket does not sell for more than \$100.00.

TAXATION; LICENSE; PACKING HOUSES; WHAT CONSTITUTES
COLD-STORAGE ROOM; SECTION 135

11 October 1954

A walk-in refrigerator 8 x 6 x 8 placed on blocks in a large room does not constitute in itself a cold-storage room or warehouse within the meaning of Section 135 of the Revenue Act which imposes a license tax on certain wholesale dealers in meat packing-house products who operate cold-storage rooms or warehouses in connection therewith.

TAXATION; INCOME; DEDUCTIONS; COMMODITY FUTURES LOSSES;
LIMITATION ON DEDUCTIBILITY

11 October 1954

Losses from transactions in commodity futures contracts as described in Section 322 (6) (c) of the Revenue Act may be deducted only to the extent of the gains made from dealings described in that section during the income year. The limitation on this deduction applies despite the fact that the particular transaction may extend over a period of more than one year.

TAXATION; SALES; USE TAX; SALES THROUGH AN AUCTIONEER

8 October 1954

An auctioneer who acts as an agent for the owner of an article and sells the same at auction for a fee or commission is not a retailer within the meaning of the sales tax law and is not liable for the sales tax with respect to such auction sale.

TAXATION; INHERITANCE; ANNUITIES; COMPUTATION OF COMMUTED VALUE

7 October 1954

In computing inheritance taxes, the Federal valuation of an annuity must be changed to conform to the result obtained from the use of the table in G. S. 8-47.

TAXATION; INHERITANCE; CLASS OF BENEFICIARIES; EFFECT OF
ANNULMENT OF ADOPTION ORDER

5 October 1954

When a nephew has been adopted and a court order annuls and revokes the adoption proceeding, the child is not entitled to classification as a Class A beneficiary for purposes of determining the inheritance taxes on the estate of the adopting person.

TAXATION; SALES; SINGLE ARTICLE; PARLOR MILKERS**30 September 1954**

A multi-unit milker utilizing stationary milk lines and vacuum lines does not constitute a single article within the \$15.00 maximum sales tax limitation with respect to a single article.

TAXATION; SALES; SINGLE ARTICLE; FORAGE HARVESTER**30 September 1954**

A Forage Harvester together with a single working attachment constitutes a single article when such harvester is not usable and ordinarily is not sold without one such attachment. Each additional attachment constitutes a single article.

**TAXATION; INCOME TAX; DEDUCTIONS; INCOME FROM BUSINESS IN
ANOTHER STATE; INTANGIBLE PROPERTY****20 September 1954**

Section 322, 10 (b) of the Revenue Act permits the deduction for income tax purposes of income from an established business or an investment in real or tangible property in another State when such income is taxed in such other state. However, a patent does not constitute real or tangible property and, therefore, royalties received for the use of a patent in another state would not qualify for the deduction above referred to.

**TAXATION; LICENSE; RESTAURANTS; INDUSTRIAL PLANT; NON-PROFIT
RESTAURANT FOR EMPLOYEE CONVENIENCE; SECTION 127****15 September 1954**

A State restaurant license tax does not apply to an industrial plant maintaining a non-profit restaurant, cafe or cafeteria solely for the convenience of its employees.

**TAXATION; SALES; USE TAX; TOBACCO SHEETS PURCHASED OUTSIDE STATE;
USE OUTSIDE NORTH CAROLINA; APPLICABILITY OF USE TAX****14 September 1954**

When goods are purchased outside North Carolina for use outside North Carolina, such goods do not become subject to the State use tax because they are later transferred to this State.

TAXATION; INCOME; TAXES OWED BY DECEDENT; EFFECT OF
FAILURE TO FILE CLAIM WITHIN 12 MONTHS

2 September 1954

When the Department fails to file a claim within 12 months from the first publication of the notice to creditors for income taxes owed by the decedent for years prior to death, the executor is not liable for the payment of such taxes if he has distributed the property. The Department would be entitled to collect the amount of such taxes from undistributed assets held by the executor and it would seem that the Department could collect such taxes from the heirs and distributees to the extent of the property distributed to them.

TAXATION; GASOLINE TAX; TARE ALLOWANCE

24 August 1954

A licensed distributor located in North Carolina who pays the gasoline tax on a receipts basis is entitled to the tare allowance provided for in G. S. 105-434 when such distributor withdraws gasoline from his supplier's tank and causes it to be transported directly to his customer either (1) in a tank truck owned, rented or hired by the distributor or (2) by means of a contract carrier or common carrier where the distributor pays the transportation charges.

A licensed distributor reporting on a receipts basis is not entitled to such a tare allowance when a customer, upon the distributor's authorization, withdraws gasoline from the distributor's supplier and such customer takes delivery at the supplier's place of business and provides his own transportation.

TAXATION; FRANCHISE TAX; EXEMPTIONS; DEVELOPMENT CORPORATION

24 August 1954

A nonprofit development corporation organized and operated for the purpose of attracting new industry to a town is exempt from the State franchise and income tax.

TAXATION; INCOME TAX; DEDUCTIONS; MAINTAINING
DEPENDENT IN INSTITUTION

10 August 1954

The special deduction for income tax purposes provided in Section 322 (9½) of the Revenue Act with respect to expenses incurred in maintaining a dependent relative in an institution for the care of mental or physical

defectives may not be claimed by any married woman nor by any person entitled to a \$2,000 personal exemption. A person who is entitled to such deduction may include any such expenses in excess of the maximum there-in provided in the regular medical expense deduction provided for in Section 322 (7½) of the Revenue Act.

TAXATION; INHERITANCE TAX; LIFE INSURANCE

6 August 1954

When a term life insurance policy expires and is renewed, the renewal is a distinct contract from the old policy. If premiums are paid on a life insurance policy by a partnership in which the subject has a half interest, half of those premiums should be regarded as paid by the subject for purposes of computing the inheritance tax on that policy.

TAXATION; INHERITANCE; EFFECT OF RENUNCIATION; INTESTACY

6 August 1954

When some of the heirs and distributees of an intestate renounce their interests in favor of other heirs and distributees, the inheritance taxes should be computed according to the laws of descent and distribution, the renunciation not preventing the passage of title to the renouncing heirs and distributees. The renunciation constitutes a taxable gift if the property is located in North Carolina. The transfer by renunciation of stock certificates having permanent physical presence in North Carolina constitutes such a taxable gift.

TAXATION; GIFT; RENUNCIATION BY HEIRS AND DISTRIBUTEES; INTANGIBLES LOCATED IN NORTH CAROLINA

6 August 1954

When some of the heirs and distributees of an intestate renounce their interests in favor of other heirs and distributees, the inheritance taxes should be computed according to the laws of descent and distribution, the renunciation not preventing the passage of title to the renouncing heirs and distributees. The renunciation constitutes a taxable gift if the property is located in North Carolina. The transfer by renunciation of stock certificates having permanent physical presence in North Carolina constitutes such a taxable gift.

TAXATION; LICENSE; CHAIN STORE TAX; BEACH STANDS; SECTION 162

21 July 1954

A stand which has about ten feet of counter space, and which is so arranged that customers do not enter the stand, but make purchases across

the counter while standing on the sidewalk is a store or mercantile establishment within the meaning of the chain store tax statute.

TAXATION; SALES; EXEMPTIONS; CHARITABLE ORGANIZATIONS;
VOLUNTEER FIRE DEPARTMENT

20 July, 1954

Purchases of equipment by a volunteer fire department which serves a rural area without discrimination between property owners and without fees or assessments, and which is supported primarily by contributions, are exempt from the retail sales tax because under such circumstances the fire department is a charitable organization.

TAXATION; LICENSE; PHYSICIANS; STATE UNIVERSITY HOSPITAL

19 July 1954

A physician employed full time by the University of North Carolina as Resident Neurologist in its Hospital is not required to pay the license tax imposed upon practicing physicians even though the patients whom he attends pay a fee to the Hospital, no part of the fee passing to the physician.

TAXATION; INTANGIBLES; ACCOUNTS PAYABLE; STATUS OF RENT
BEFORE RENTAL PERIOD ENDS

16 July 1954

Rental liability computed as of December 31st, but which does not become due until sometime during the succeeding year, does not constitute an account payable as of December 31st for intangibles tax purposes.

TAXATION; INHERITANCE; GOLD COIN IN MEXICAN LOCK BOX

15 July 1954

Gold coin in a Mexican lock box is not subject to inheritance tax by North Carolina even though it passes by the will of a resident of North Carolina.

TAXATION; GIFT; DEDUCTIONS; CHARITABLE ORGANIZATIONS;
MASONIC TEMPLE

15 July 1954

A gift to a Masonic Lodge to be used for the construction of a Masonic Temple is not exempt from the gift tax.

**TAXATION; INTANGIBLES; ADVANCES TO RELATED CORPORATIONS;
ACCOUNTS RECEIVABLE**

12 July 1954

Advances made by a corporation to affiliated corporations constitute accounts receivable for intangibles tax purposes.

TAXATION; INHERITANCE; LIENS; STATUS OF ENTIRETIES PROPERTY

6 July 1954

The surviving tenant of property held by the entireties is liable for the inheritance taxes due on account of the transfer of such property. The Department may follow the normal procedure for collection including a sale under execution.

**TAXATION; GIFT BY ENTIRETIES; CORRECTION OF MISTAKE;
APPLICABILITY OF GIFT TAX**

7 July 1954

When a person, intending to make a gift to his daughter, inadvertently and through mutual mistake and error, conveys the property to the daughter and her husband, the daughter and husband may reconvey to the donor in order that the donor may execute a new conveyance to the daughter only without any gift tax attaching except with respect to the third transaction.

**DIGEST OF
OPINIONS TO LOCAL GOVERNMENT
COMMISSION**

COUNTIES; ABC BOARDS; AUDIT CONTRACTS

10 June 1955

Construing together G. S. 153-143, G. S. 153-130 and G. S. 18-45 (o), it is thought that the certificate of the county accountant required by G. S. 153-130 is not required in a contract for auditing its accounts made by a board of alcoholic control.

DIGEST OF OPINIONS TO UTILITIES COMMISSION

WATER: INDIVIDUALS FURNISHING WATER TO OTHERS FOR COMPENSATION; PUBLIC UTILITIES; AUTHORITY OF COMMISSION TO CONTROL

22 April 1955

Private individuals furnishing water for compensation are public utilities within the meaning of the Public Utilities Act of 1933, but, if they fail to apply for a Certificate of Convenience and Necessity and go out of such business, the Utilities Commission cannot compel them to apply for such Certificate or continue in such business.

DIGEST OF MISCELLANEOUS OPINIONS

AIRPORTS; ADMINISTRATIVE AGENCIES; DELEGATION OF LEGISLATIVE AUTHORITY

22 March 1956

The Raleigh-Durham Airport Authority does not have power to enact ordinances or laws, the violation of which would be a misdemeanor.

APPALACHIAN STATE TEACHERS COLLEGE; VIRGINIA MOTOR FUEL TAX

25 January 1955

The Appalachian State Teachers College is liable for the Virginia road tax on gasoline or other motor fuel used in Virginia if it transports coal from a mine in Virginia to the College by its own road tractor, tractor-truck, or any truck having more than two axles. The tax is 6c per gallon on the fuel used in Virginia, determined by taking a proportion of the miles travelled in Virginia to the total miles travelled by all vehicles of the College everywhere, and multiplying this ratio by the number of gallons of fuel used in the total operation.

ATTORNEYS; ADMINISTRATIVE LAW; RIGHT TO COUNSEL IN AN ADMINISTRATIVE PROCEEDING

15 November 1955

The local law creating the Mecklenburg County Civil Service Board provides that the Board is to hear any complaint made against an officer

or employee coming under the jurisdiction of the Board, but does not expressly provide that those appearing before the Board are entitled to be represented by counsel. Although well established that in any criminal prosecution a person is entitled to be represented by counsel, there is no express constitutional right to representation by counsel in a proceeding before an administrative body, and probably there is no constitutional right to assistance of counsel in such an administrative proceeding.

ATTORNEY; ILLEGAL PRACTICE OF LAW

15 May 1956

No person except a licensed attorney at law may prepare deeds, mortgages, and other legal documents either for or without a consideration. See G. S. 84-4.

ATTORNEYS; PRACTICE OF LAW; DRAWING OF DEEDS

5 April 1956

It is unlawful for a person who is not a licensed member of the State Bar to prepare a deed to real property for someone else even though no charge is made for the service.

ATTORNEYS AT LAW; SHERIFFS; ELIGIBILITY OF A PRACTICING ATTORNEY TO HOLD THE OFFICE OF SHERIFF OR DEPUTY SHERIFF

30 September 1954

A practicing attorney is not eligible to hold the office of county sheriff or deputy sheriff. See G. S. 84-2; G. S. 162-2; DAVIS v. MOORE, 215 N. C. 449.

ATTORNEYS; TRIAL AND DEFENSE COUNSEL IN COURTS-MARTIAL PROCEEDINGS

26 April 1956

In order to serve as trial or defense counsel in a general courts-martial proceedings, a person must be a qualified lawyer. Any officer of the National Guard who is not a qualified attorney may serve as trial or defense counsel in a special or summary courts-martial proceedings. The fact that the officer is a justice of the peace would not disqualify him to serve in such capacity.

BANKS; SMALL LOANS ACT; WHEN NOTARY FEE CAN BE CHARGED

6 July 1955

Under the Small Loans Act, passed by the General Assembly of 1955, a notary fee can be charged if the security instrument is recorded but it cannot be charged unless the instrument is recorded; the Act authorizes a lender to charge and use non-recording insurance as a security for the loan, and in this connection the lender can charge one notary fee so that the instrument will be ready for recordation if the insurance company desires to record the instrument; the insurance company, however, would pay its own recording fee.

BANKS; LIABILITY FOR WRONGFUL ACTS OF TRUST OFFICERS

20 May 1955

A bank would be liable for misapplication or misappropriation of trust funds by a trust officer when the bank is acting as trustee without bond under the provisions of G. S. 53-160 et seq.

BANKS AND BANKING; TYPES OF BANKING INSTITUTIONS

30 January 1956

In the narrow sense, as used in Chapter 53 of the General Statutes relating to banks, subject to the supervision of the Commissioner of Banks, the word "bank" ordinarily means a commercial bank and the words "industrial bank" mean the special type of bank accepting deposits and making installment loans as particularly and specifically described in said Chapter 53. Other institutions and agencies which have some characteristics of banking institutions are building and loan associations, which are supervised by the Insurance Commissioner, credit unions which are supervised by the Superintendent of Credit Unions of the State Department of Agriculture, small loan agencies, which are supervised by the Commissioner of Banks, and national banks and federal savings loan associations which operate under federal statutes.

**BEER AND WINE; ELECTIONS; QUALIFICATIONS OF
SIGNERS OF PETITIONS**

22 October 1954

It is thought that in a municipal beer and wine election under G. S. 18-127, it is not necessary for the governing body to find as a fact that each person who signed the petition actually voted in the last municipal

primary or general election for town officials. Instead, the board must simply find that the petition was actually signed by registered voters of the municipality equivalent to the number of 15% of the number of votes cast in the last primary or general election for municipal officers, in whichever election (primary or general) the greater number of votes was cast. *WEAVER v. MORGAN*, 232 N. C. 642.

BEER AND WINE; ELECTIONS; SUFFICIENCY OF PETITION UNDER G. S. 18-124

11 July 1955

The expression "15% of the registered voters of the county that voted for Governor in the last election", as used in G. S. 18-124 (b), refers to the total number of votes cast for Governor in the last general election and not necessarily the identical persons who cast votes for Governor in said election. *WEAVER v. MORGAN*, 232, N. C. 642.

It is thought that the expression "correct precinct in which petitioner last voted" as used in G. S. 18-124 (c) refers to the last general election held and not necessarily to the last election for Governor.

It is also thought that the name of a petitioner to a beer and wine petition need not necessarily appear in the exact form in which the name appears on the registration book provided election officials are satisfied that person signing is one who is properly registered and entitled to vote.

BEER AND WINE; ELECTIONS; TIME WITHIN WHICH ELECTION CALLED

14 October 1955

Although the question is not entirely free from doubt, it is the opinion of this office that the statutory provision, requiring a beer and wine election to be called within thirty (30) days after the petition therefor is presented, is mandatory and not directory.

BEER AND WINE; INSPECTORS

18 January 1956

Construing together G. S. 18-140 and G. S. 18-116.5, it is thought that beer inspectors appointed under the provisions of G. S. 18-140 have in counties operating ABC stores all the authority of peace officers granted by G. S. 18-116.5.

BEER AND WINE; LICENSE; WET CITY AND DRY COUNTY

7 September 1955

When a county has by an election made the sale of beer therein unlawful and a municipality in said county has thereafter legalized the sale of

beer, no county beer license is necessary in order to sell beer in said municipality, and said county is not entitled to share in the distribution of the State Beer Crown Tax proceeds although the municipality will receive its appropriate share.

BEER AND WINE; LICENSE REFUSAL BY GOVERNING BODY

18 August 1955

It is thought that an applicant for a beer or wine permit may not be arbitrarily refused a license by the governing body of a municipality when the applicant has complied with the provisions of G. S. 18-75, simply because members of the governing body of the town are of the opinion that there are already enough beer or wine dealers located within the municipality.

BEER AND WINE; PRESUMPTION AS TO THE POSSESSION OF MORE THAN FIVE GALLONS OF BEER

9 June 1955

It is thought that beer is a malt liquor within the contemplation of G. S. 18-32 (4). *BILBO v. STATE*, 37 S.E. (2d) 812; *EUBANKS v. STATE*, 286 S.W. 234; *SCOTT v. STATE*, 14 S.E. (2d) 272; *PURCELL v. STATE*, 55 So. 847. It is thought that no provision of Article 4, Chapter 18 of the General Statutes repeals by implication the provisions of G. S. 18-32 (4), and that proof of the possession even in the defendant's own home of more than five gallons of beer is sufficient to make a prima facie case of possession of such beer for the purpose of sale. *STATE v. HILL*, 236 N. C. 704; *STATE v. BRADY*, 236 N. C. 295; *STATE v. TATE*, 210 N. C. 168; *STATE v. LANGLEY*, 209 N. C. 178, and *STATE v. DOWELL*, 195 N. C. 523.

BIBLE TEACHING PERMIT

17 May 1956

The opinion of this Office is that no permit or license is required for the teaching of the Bible in North Carolina.

BONDS; REVENUE BONDS; STATE INSTITUTIONS

29 March 1956

Under the provisions of Chapter 1289 of the 1955 Session Laws, a higher educational institution described therein may issue notes to provide construction funds in anticipation of the issuance and sale of revenue bonds.

**BUILDING CODE; REQUIREMENT AS TO THE INSTALLATION OF
SPRINKLER SYSTEMS**

10 November 1954

Section 1702 of the North Carolina Building Code, relating to the requirement as to the installation of sprinkler systems, does not apply to buildings which have been converted and where there has been no increase in the area or height of the buildings.

CASWELL TRAINING SCHOOL; PROCEDURE FOR ADMISSION OF ADULT

15 April 1955

The procedure for admission of adults to Caswell Training School for mental defectives is set out in detail in G. S. 116-131.

**CASWELL TRAINING SCHOOL; APPLICATION FOR ADMISSION OF MINOR
CHILD; DOCTOR'S CERTIFICATE**

1 September 1955

The physician's certificate or affidavit, which is a part of the application for admission of a minor child to Caswell Training School, is not required to be taken before the Clerk of the Superior Court, but may be taken before any officer authorized to take oaths, including a notary public (Reference G. S. 116-126 through 116-137).

CEMETERIES; REMOVAL OF GRAVES

5 March 1956

The right to move graves and monuments or tombstones from one place to another is governed by a series of statutes contained in Article 5 of Chapter 65 of the General Statutes.

**CHIROPODISTS; AUTHORITY TO ISSUE PRESCRIPTIONS AND USE OF DRUGS
IN THE PRACTICE OF CHIROPODY**

10 November 1954

Chiropodists are authorized to issue prescriptions and use drugs in the medical treatment of ailments of the human foot.

CHIROPODY; USE OF NARCOTICS BY CHIROPODISTS; USE OF ANTIBIOTICS

20 March 1956

A chiropodist may lawfully use no anesthetic other than a local anesthetic. The North Carolina statute defines chiropody as "The surgical or medical or mechanical treatment of all ailments of the human foot, except the correction of deformities requiring the use of the knife, amputation of the foot or toes, or the use of an anesthetic other than local."

CHIROPRACTORS; PRACTICE OF MEDICINE; INSURANCE

12 December 1955

The words "... only a physician or surgeon legally licensed to practice medicine" in an insurance policy extend to coverage of claims incurred when the insured is treated by a chiropractor.

CIVIL PROCEDURE; COMPUTATION OF TIME

1 March 1956

The computation of time in civil proceedings is governed by Section 1-593 of the General Statutes which provides that the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is Sunday or a legal holiday, it must be excluded.

CIVIL PROCEDURE; PRE-TRIAL EXAMINATION

9 May 1955

An examination before trial should be held in the county, or other corresponding governmental subdivision, in which the person to be examined resides except as provided in G. S. 1-568.1 (b) and except where for good cause shown the clerk makes an order changing the place of examination as provided by G. S. 1-568.1 (c).

**CIVIL PROCEDURE; SERVICE OF SUMMONS;
SERVICE ON SUNDAYS OR HOLIDAYS**

21 July 1954

A summons may be validly served on a Sunday or a holiday.

**COMMISSIONER OF PUBLIC TRUST CONTRACTING FOR HIS OWN BENEFIT;
BANKING TRANSACTIONS EXEMPT**

21 October 1955

The provisions of G. S. 14-234, which prohibit a commissioner of public trust contracting for his own benefit, do not apply to public officials transacting business with banks or banking institutions in regular course of business. Such transactions, however, must be authorized by the governing board concerned.

COMMISSIONER OF PUBLIC TRUST CONTRACTING FOR HIS OWN BENEFIT

8 September 1954

It would be violative of G. S. 14-234, which prohibits a commissioner of public trust contracting for his own benefit, for a member of a county board of elections to bid and accept a contract for the printing of county election ballots.

**COMMISSIONER OF PUBLIC TRUST CONTRACTING FOR HIS OWN BENEFIT;
MEMBER OF COUNTY BOARD OF COMMISSIONERS OR COUNTY BOARD OF
EDUCATION SELLING FIRE INSURANCE COVERING
COUNTY PROPERTY**

2 September 1955

A member of a board of county commissioners or a member of a county board of education may not lawfully act as agent for a fire insurance company and sell fire insurance policies covering property owned by the county.

**COMMISSIONER OF PUBLIC TRUST CONTRACTING FOR HIS OWN BENEFIT;
AUTHORITY OF HOUSING AUTHORITY TO DEPOSIT FUNDS IN A BANK
OF WHICH THE PRESIDENT OF THE BANK AND A COMMISSIONER
OF A HOUSING AUTHORITY ARE THE SAME PERSON**

13 January 1955

A public agency may deposit its funds in a bank in which one of its directors is an officer in the bank concerned, provided such action is authorized by the public agency concerned.

**CONSTITUTIONAL LAW; DETERMINABLE FEE; ABOLITION
OF POSSIBILITY OF REVERTER**

23 August 1954

A statute destroying the possibility of reverter created by a previously executed deed conveying a fee simple determinable, is of doubtful constitutionality.

CONSTITUTIONAL LAW; DOUBLE JEOPARDY; TRIAL OF THE DEFENDANT SECOND
TIME ON SAME CHARGE AFTER MOTION IN ARREST OF JUDGMENT WAS
ALLOWED IN PREVIOUS TRIAL BECAUSE OF UNSIGNED WARRANT

31 August 1954

Where a defendant is arrested and tried on a warrant in Recorder's Court and after hearing the evidence the Recorder's Court Judge enters a verdict of guilty after which a motion in arrest of judgment is allowed for that the warrant was unsigned, in such event to try the defendant again on the same charge would be to place him in double jeopardy in violation of his constitutional rights.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; COUNTY ACCOUNTANT;
JUSTICE OF THE PEACE

1 August 1955

The office of justice of the peace and that of county accountant are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding. The office of justice of the peace, however, is exempt from this provision of the Constitution, and one person may hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; MEMBER OF AGRICULTURE
STABILIZATION AND CONSERVATION COMMITTEE; ELECTION OFFICIAL

20 June 1956

A member of a county agriculture stabilization and conservation committee and a local election official are both considered public officers within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

Ordinarily, a public officer who accepts a second public office automatically vacates the former. Insofar as the election laws are concerned, however, under G. S. 163-15, no person holding any office or place of trust or profit under the Government of the United States, or the State of North Carolina, is eligible to appointment as an election official.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; ASSISTANT REGISTER OF
DEEDS AND SCHOOL COMMITTEEMAN

5 March 1956

The office of assistant register of deeds of a county and that of school committeeman are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; CAPTAIN OF STATE-OWNED
BOAT WITH POWER OF ARREST; COUNTY COMMISSIONER**

6 July 1954

The Captain of a State-owned boat who is clothed with the power of arrest in performing the duties of his office is considered a public officer within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and he could not legally serve in this capacity and at the same time hold office as a county commissioner.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; CHIEF OF POLICE
AND TOWNSHIP CONSTABLE**

23 March 1956

The office of chief of police of a municipality and that of township constable are both public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; ATTORNEY OF CITY

3 November 1955

A city attorney is not considered a public officer within the meaning of Article XIV, Section 7 of the Constitution, which prohibits double office holding.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; CITY
POLICEMAN AND DEPUTY SHERIFF**

28 March 1956

The office of city policeman and that of deputy sheriff are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; COUNTY
DOG WARDEN AND SHERIFF**

7 July 1954

The office of county dog warden is a public office within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not serve in this capacity and at the same time hold another public office.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; EDUCATION BOARD
MEMBER; MEMBER OF TOWN COMMISSIONERS; POLICE CHIEF;
TOWNSHIP CONSTABLE

5 November 1954

The office of membership on a town board of commissioners, that of membership on a county board of education, that of chief of police, and that of township constable are all offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold any combination of these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; ELECTION BOARD
MEMBER; MEMBER OF CITY COUNCIL; MEMBER OF LOCAL SCHOOL
COMMITTEE; CHAIRMAN OF COUNTY WELFARE BOARD

10 June 1955

Membership on a city council and membership on a local school committee are both public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

A person who holds a position of employment with the State is not considered a public officer within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and he may hold an elective or appointive public office in his community.

The office of chairman of a county welfare board and that of membership on a local school committee are considered public offices; however, the office of chairman of a county welfare board is exempt from the constitutional prohibition against double office holding, as a commissioner of a public charity, and one person may hold this office and at the same time hold another public office.

Membership on a city council and membership on a county board of elections are both considered public offices within the meaning of the constitutional prohibition against double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; EQUALIZATION
AND REVIEW BOARD MEMBER; MAYOR

25 April 1955

The office of chairman of a county board of equalization and review and that of mayor of a municipality are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; FIRE DEPARTMENT
CHIEF AND MAYOR

4 April 1955

The office of fire chief and that of mayor are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; GAME WARDEN AND
MEMBER OF LOCAL SCHOOL COMMITTEE

17 December 1954

The office of game warden and that of membership on a local school committee are both public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; HEALTH BOARD MEMBER;
MEMBER OF COUNTY WELFARE BOARD

11 May 1955

The office of membership on a local school committee and that of membership on a county board of health are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

With respect to the office of membership on a county welfare board, this office has expressed the view that, should our Court have an opportunity to pass upon the question, it would hold that a member of a county welfare board is exempt from the above section of the Constitution as a commissioner of public charities.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING;
HOSPITAL BOARD MEMBER; MAYOR

6 June 1955

Membership on a board of managers of a county tuberculosis hospital and the office of mayor of a town are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time. The acceptance of a second office by one already holding a public office operates ipso facto to vacate the first. STATE v. THOMPSON, 122 N. C. 493.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; HOUSING AUTHORITY
MEMBER; TRUSTEE OF EDGECOMBE COUNTY MEMORIAL LIBRARY

31 January 1955

The office of membership on the Board of Trustees of the Edgecombe County Memorial Library, created by Chapter 466 of the Session Laws of 1953, and that of a member of the Tarboro Housing Authority are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; JUSTICE OF THE
PEACE AND CHIEF OF POLICE

26 July 1955

Under the exception contained in Article XIV, Section 7 of the State Constitution, a justice of the peace may at the same time hold another office in this State.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; JUDGE; EMERGENCY JUDGE
AND MEMBER OF THE GENERAL ASSEMBLY

3 August 1955

The office of Emergency Judge of the Superior Court and that of membership in the General Assembly are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; JUDGE PRO TEM, DOMESTIC
RELATIONS COURT; CHAIRMAN, MUNICIPAL BOARD OF ELECTIONS

21 February 1955

The office of judge pro tem of a domestic relations court and that of chairman of a municipal board of elections are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; JUDGE OF RECORDER'S
COURT AND CITY POLICE OFFICER

30 August 1954

The office of judge of a recorder's court and that of being a city policeman are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; LIBRARY BOARD MEMBER
AND MEMBER OF NORTH CAROLINA LIBRARY COMMISSION

21 June 1955

Membership on a local library board and membership on the North Carolina Library Commission are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; MAYOR;
MEMBER OF LOCAL SCHOOL COMMITTEE

19 March 1956

The office of mayor and that of membership on a local school committee are both public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; POSITIONS OF
MAYOR AND SUPERINTENDENT OF PUBLIC WELFARE

23 March 1956

Under the rules of the Merit System, the superintendent of a county department of public welfare may not also hold office of mayor of an incorporated town.

One person may serve as a member of the county board of public welfare and member of the North Carolina Rural Electrification Authority.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; MEMBER OF A
BOARD OF ALDERMEN AND STATE SENATOR

22 July 1954

It is thought that a person may not legally serve as a member of the Board of Aldermen of a town and as a State Senator at the same time

without violating the provisions of Article XIV, Section 7 of the State Constitution. CLARK v. STANLEY, 66 N. C. 60; RHODES v. LOVE, 153 N. C. 468; EDWARDS v. BOARD OF EDUCATION, 235 N. C. 345; STATE v. FORTNER, 236 N. C. 264.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; MEMBER OF CITY SCHOOL BOARD AND DIRECTOR OF THE CONFEDERATE WOMAN'S HOME ASSOCIATION

30 June 1955

It is thought that a member of the Board of Directors of the Confederate Woman's Home Association is a commissioner of a public charity within the contemplation of Article XIV, Section 7 of the State Constitution, which with certain exceptions prohibits double office holding.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; POSITIONS OF MEMBER OF COUNTY WELFARE BOARD AND MEMBER OF THE RURAL ELECTRIFICATION AUTHORITY

23 March 1956

Under the rules of the Merit System, the Superintendent of a county department of public welfare may not also hold the office of mayor of an incorporated town.

One person may serve as a member of the county board of public welfare and member of the North Carolina Rural Electrification Authority.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; MEMBER, MADISON COUNTY BOARD OF ELECTIONS; MEMBER, MADISON COUNTY TAX EQUALIZATION BOARD

19 March 1956

The office of membership on a county board of elections and that of membership on the Madison County Tax Equalization Board are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; TOWN COMMISSIONER; NOTARY PUBLIC; CITY CLERK

23 September 1955

The office of city clerk, that of town commissioner, and that of notary public are all considered public offices within the meaning of Article

XIV, Section 7, of the Constitution, which prohibits double office holding. The office of notary public, however, is exempt from the above section of the Constitution, and one person may hold that office and at the same time hold another public office. One person may not hold the office of city clerk and that of town commissioner at the same time without violating this section of the Constitution.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; PRECINCT CHAIRMAN;
TOWN COMMISSIONER; MEMBER OF BOARD OF EDUCATION

18 April 1956

A precinct chairman elected under the provisions of Section 14 of the Plan or Organization of the Democratic Party is not considered a public officer within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; PRISON
GUARD AND DEPUTY SHERIFF

18 November 1954

The office of a prison guard and that of a deputy sheriff are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

A person who is a mere employee of the Prison Department and is not clothed with the power of arrest is not a public officer within the meaning of the above section of the Constitution.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; MEMBER OF GENERAL
ASSEMBLY; PUBLIC ADMINISTRATOR OF A COUNTY

30 January 1956

One person may hold the position of public administrator of a county and at the same time lawfully serve as a member of the General Assembly. See *STATE v. SMITH*, 145 N. C. 476.

CONSTITUTIONAL LAW; (1) DOUBLE OFFICE HOLDING; RABIES INSPECTOR AND
DEPUTY SHERIFF. (2) AUTHORITY OF RABIES INSPECTOR TO MAKE ARREST

11 July 1955

(1) The office of rabies inspector, appointed under Part 7, Article 34, Chapter 106 of the General Statutes, and the office of deputy sheriff are

both public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

(2) A rabies inspector, appointed under Part 7, Article 34, Chapter 106 of the General Statutes, does not have the power of arrest.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; SCHOOL
COMMITTEEMAN AND REGISTER OF DEEDS**

19 November 1954

The office of school committeeman and that of register of deeds are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; MEMBER OF SELECTIVE
SERVICE BOARD AND MEMBER OF ALCOHOLIC BEVERAGE CONTROL BOARD**

9 December 1955

Membership on a county selective service board is exempt from the provisions of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and is considered as a commissioner for a special purpose.

A person may be a member of a county selective service board and at the same time hold another public office.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; SERGEANT-AT-ARMS;
MAYOR OF MUNICIPALITY**

20 July 1954

A Sergeant at Arms and Mayor of a town are both public offices within the prohibition of Article XIV, Section 7, of the Constitution, against double office holding.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; SOLICITOR OF RECORDER'S
COURT; MEMBER OF COUNTY BOARD OF ELECTIONS**

28 May 1956

The office of solicitor of a municipal recorder's court and that of membership on a county board of elections are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; COUNTY TAX COLLECTOR
AND TOWN POLICEMAN**

9 January 1956

The office of town policeman and that of county tax collector are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; TOWN CLERK;
NOTARY PUBLIC**

19 December 1955

The office of town clerk and that of notary public are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding. The office of notary public, however, is exempt from this section of the Constitution, and you are advised that one person may hold the office of town clerk and also hold office as a notary public.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; TOWN POLICEMAN;
TOWNSHIP CONSTABLE; DEPUTY SHERIFF**

7 June 1956

The office of town policeman, that of township constable, and that of deputy sheriff are all considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold any combination of these offices at the same time.

**CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING;
DEPUTY SHERIFF AND TOWNSHIP CONSTABLE**

17 February 1955

The office of deputy sheriff and that of township constable are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING;
TOWN POLICEMAN AND DEPUTY SHERIFF

23 June 1955

The office of town policeman and that of deputy sheriff are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; TRUANT OFFICER; JUSTICE
OF THE PEACE; TOWN COMMISSIONER

20 October 1955

The office of truant officer, that of town commissioner, and that of justice of the peace are all considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding. The office of justice of the peace, however, is exempt from the above section of the Constitution, and one person may hold this office and at the same time hold another public office.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; MEMBER OF STATE SENATE;
MEMBER OF BOARD OF TRUSTEES, EAST CAROLINA COLLEGE

8 August 1955

One person may be a member of the State Senate, and at the same time be a member of the Board of Trustees of East Carolina College without violating the provisions of Article XIV, Section 7 of the constitution relating to double office holding.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; COUNTY
VETERANS SERVICE OFFICER AND TOWN ALDERMAN

28 March 1955

The position of a county veterans service officer is not considered a public office within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding. A person may occupy the position of veterans service officer and at the same time hold office as town alderman.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; MEMBER OF COUNTY
WELFARE BOARD; MEMBER OF COUNTY BOARD OF HEALTH;
TOWN COMMISSIONER

29 April 1955

The office of membership on a county welfare board is a public office; however, this office is exempt from the provisions of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may hold this office and at the same time hold another public office.

The office of membership on a county board of health and that of town commissioner are both considered public offices within the meaning of the above section of the Constitution, and one person may not hold both these offices at the same time.

CONSTITUTIONAL LAW; EMOLUMENTS OR PRIVILEGES; RIGHT OF
MUNICIPALITY TO GRANT EXCLUSIVE FRANCHISES

17 January 1956

Our Constitution, Article I, Section 7, prohibits the granting of exclusive emoluments or privileges, and it is not within the power of a municipality to grant an exclusive franchise except for public service.

CONSTITUTIONAL LAW; FINES AND FORFEITURES; CLEAR PROCEEDS TO
SCHOOL FUND

30 August 1954

Under Article IX, Section 5, of the Constitution, the clear proceeds of all fines and forfeitures are required to be paid into the school fund of the county where such fines and forfeitures are collected.

CONSTITUTIONAL LAW; ARTICLE V, SECTION 4 OF THE NORTH CAROLINA
CONSTITUTION; LIMITATIONS UPON INCREASE OF PUBLIC
DEBT BY MUNICIPALITIES

23 May 1955

Article V, Section 4 of the State Constitution provides that, except for certain purposes therein enumerated, a county or municipality may not, without a vote of the people, increase its public indebtedness during any fiscal year by more than two-thirds of the amount by which its indebtedness was decreased during the preceding fiscal year. *HALLYBURTON v. BOARD OF EDUCATION*, 213 N. C. 9; *BOARD OF EDUCATION v. BOARD OF EDUCATION*, 217 N. C. 90; *COR v. SURRY COUNTY*, 226 N. C. 125.

CONSTITUTIONAL LAW; PUBLIC OFFICERS—DEFINITION

7 October 1955

A deputy sheriff is a public officer; hence, one person cannot serve as deputy sheriff and chief of police. *GOWENS v. ALAMANCE COUNTY*, 216 N. C. 109.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; PUBLIC OFFICERS; DOG WARDEN; DEPUTY SHERIFF; EFFECT OF SECOND OFFICE

14 September 1955

Where an office holder accepts a second office, he automatically and instantly vacates the first office.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; MEMBERSHIP ON THE GOVERNOR RICHARD CASWELL MEMORIAL COMMISSION

20 February 1956

The Governor Richard Caswell Memorial Commission is not clothed with sufficient sovereign functions of the State Government so as to constitute its members public officers within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; PUBLIC OFFICES; MEMBER OF THE COUNCIL OF THE NORTH CAROLINA STATE BAR

28 October 1955

Membership on the Council of the North Carolina State Bar is considered a public office within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold this office and at the same time hold another public office.

Our Supreme Court has held that the acceptance by a public officer of a second public office automatically vacates the first. See *STATE v. THOMPSON*, 122 N. C. 493.

CONSTITUTIONAL LAW; DOUBLE OFFICE HOLDING; PUBLIC OFFICES; PRISON SUPERINTENDENT; ASSISTANT PRISON SUPERINTENDENT; PRISON GUARD; DEPUTY SHERIFF

2 September 1954

The office of prison superintendent, assistant prison superintendent, prison guard and that of a deputy sheriff are all officers within the meaning

of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold any combination of these offices at the same time.

CONSTITUTIONAL LAW; REAPPORTIONMENT; CONSTITUTIONAL AMENDMENT
REDUCING RESIDENCE FOR VOTING PURPOSES

14 February 1955

The Constitutional amendment changing the requirement of residence for voting purposes in a precinct from four months to thirty days has been adopted and is now a part of the Constitution.

CONSTITUTIONAL LAW; REAPPORTIONMENT; FAILURE TO REAPPORTION

14 April 1955

Failure on the part of the General Assembly to reapportion the membership according to constitutional requirements does not invalidate Acts of the General Assembly. Our Court has held that the question of reapportionment is a political one and the courts can do nothing about it.

CONSTITUTIONAL LAW; REAPPORTIONMENT; RESIDENCE

4 March 1955

It is thought that the 1954 amendment to Article VI, Section 2 of the State Constitution is self-operating and requires no statutory enactment to place it in effect. All that is required is the certificate of the Governor in conformity with the requirements of Section 4, Chapter 972, Session Laws of 1953.

CONTRACTORS; ELECTRICAL; LICENSES; PRIVILEGE LICENSE TAXES

20 March 1956

A person desiring to engage in the business of installing electrical wiring jobs, such as wiring houses, must qualify by obtaining a license from the State Board of Electrical Contractors, although the contemplated jobs be small and the charge is to be based upon regular electrician's wages.

CONTRACTS; REWARDS TO POLICE OFFICERS

7 October 1955

A reward by a private individual to a police officer is void for lack of consideration and also it is contrary to public policy and illegal; however,

if the sum of money involved is a gratuity paid after the performance of the meriting service and unanticipated by the officer, it is not contractual and not against public policy.

CORPORATIONS; CHARTER FILING FEES; CLERKS OF THE SUPERIOR COURT; FILING FEES

1 December 1955

Insofar as the general law is concerned, G. S. 5-159 controls as to a clerk's filing fees with respect to recording corporation certificates, and Chapter 879 of the Session Laws of 1955, amending G. S. 2-26, governs only in the special situations described therein, namely, when the filing service is performed "for any court or person of any county *other than his own county.*"

CORPORATIONS; DISSOLUTION BY INCORPORATORS BEFORE ORGANIZATION COMPLETED

8 March 1956

Where one of the three incorporators of a corporation has moved from the State, leaving no forwarding address, and it is desired to dissolve the corporation prior to the time the organization of the corporation was completed, if the consent of the three incorporators to relinquish the charter cannot be obtained, it appears that the remaining two incorporators should complete formal organization of the corporation before attempting dissolution of the corporation under the procedures set out in G. S. 55-121. The statutory procedure for dissolution by the *incorporators*, contained in G. S. 55-123, is interpreted to require the consent of all the incorporators, so that the consent of two out of three incorporators is not sufficient under this statute.

CORPORATIONS; INCORPORATION; 1955 LAW

26 May 1955

The 1955 Corporation Law does not become effective until July 1, 1957. Therefore, the procedure for incorporating prior to that date is governed by the old law.

CORPORATIONS; NON-STOCK CORPORATIONS; PLACE OF MEETING

31 January 1956

Under the provisions of G. S. 55-105 meetings of members of non-stock corporations incorporated in this state must be held in this state. Under the provisions of G. S. 55A-89, which becomes effective July 1, 1957, meetings of such members could be held outside the state if the bylaws so provide.

CORPORATIONS; UNIFORM STOCK TRANSFER ACT; G. S. 55-95; STATEMENT ON
CERTIFICATE OF STOCK AS TO RESTRICTIONS ON TRANSFER

29 August 1955

Compliance with G. S. 55-95, in regard to a statement on a stock certificate of any restriction upon the right to transfer such stock, requires setting out the substance of such restriction. A statement merely that a restriction exists is not sufficient.

COURTS; COSTS; BASIS FOR COSTS; STATUTORY COSTS ONLY

28 February 1956

A town may not add additional court costs in criminal cases to defray the costs of a town police care in the absence of legislation so authorizing.

COURTS; COSTS; PAYMENT OF HALF COSTS BY COUNTY;
RECORDERS' COURTS; G. S. 7-207

4 November 1955

The requirement of G. S. 7-207 that one half of the court costs be paid to the municipal treasurer when a defendant is sentenced to work upon "the public works of the county" has no application when the defendant is sentenced to be assigned to work under the supervision of the State Highway & Public Works Commission.

COURTS; COSTS; HIGHWAY PATROL ARREST FEES; SHERIFF'S ARREST FEES;
SOLICITOR FEES; DISPOSITION AS BETWEEN MUNICIPAL AND COUNTY FUNDS

12 September 1955

State highway patrol arrest fees are required by G. S. 20-193 and must be paid into the general fund of the county in which such arrest fees are taxed as costs. Under the provisions of G. S. 7-206, relating to municipal recorder's courts, the prosecuting attorney's fee therein prescribed must be paid into the general fund of the municipality unless said prosecuting attorney is on a fee basis pursuant to G. S. 7-203. G. S. 6-12 requires that solicitor's fees shall be taxed in criminal cases in the superior court according to the schedule therein set out, and such fees must be paid into the county school fund.

COURTS; COSTS; RECORDERS' COURTS; APPEAL TO SUPERIOR COURT;
TOTAL COSTS IN BOTH COURTS

28 December 1955

When a person is convicted in a recorder's court and, on appeal, is convicted in the superior court, all the recorder's court costs should be taxed together with such additional costs as accrue by reason of the trial in the superior court.

COUNTIES; AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES

1 March 1956

Although a county may find it advantageous, in order to have a local office, no statutory obligation exists to furnish office space to a county Agricultural Stabilization and Conservation Committee.

COUNTIES; AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES

4 May 1956

A county may extend non-ad valorem tax funds, when available, to lease office space for local Agricultural Stabilization and Conservation Department offices.

COUNTIES; APPROPRIATIONS; FEDERAL FUNDS

12 June 1956

Certain funds received by Granville County from the Federal Government may not be appropriated by the County to the North Carolina Wildlife Resources Commission.

COUNTIES; BOARD OF HEALTH; REGULATION OF TRAILER CAMPS

3 September 1954

County boards of health have authority under G. S. 130-19 to adopt regulations relative to the operation of trailer and tourist camps.

COUNTIES; CAPITAL RESERVE FUND

2 May 1956

The withdrawal and use of funds deposited in a county capital reserve fund is governed by Article 10A of Chapter 153 of the General Statutes.

COUNTIES; COMPENSATION OF EMPLOYEES**14 June 1956**

Chapter 535 and Chapter 552 of the Session Laws of 1951 affects only the authority of the Board of County Commissioners to increase the salaries of county officers and employees whose salaries are paid exclusively by the county and does not affect the authority of the Board to fix the compensation of county officers and employees whose salaries are paid in part from funds derived from other governmental agencies.

COUNTIES; COUNTY HOSPITALS**13 February 1956**

When a dwelling house located on county hospital grounds is no longer needed as a residence for the hospital administrator, such surplus property may be sold and the proceeds could be expended for hospital purposes.

COUNTIES; DONATIONS; PUBLIC PURPOSE**19 December 1955**

In the absence of some very direct relationship in terms of caring for the poor of the county, such County would not be authorized to donate public funds to charitable or hospital institutions outside the county.

COUNTIES; EMPLOYEES; BENEFITS; HOSPITAL EXPENSES**30 January 1956**

A county would be authorized to secure hospitalization discounts for its employees and to pay to the hospitals the amounts of such discounts so long as any statutory provision as to the maximum salary of any employee would not be violated thereby.

COUNTIES; EMPLOYEES; GROUP LIFE INSURANCE**6 July 1955**

Under House Bill No. 1174, enacted by the 1955 General Assembly, counties and municipalities are included as "employers" within the meaning of G. S. 58-210, relating to the issuance of group life insurance policies.

COUNTIES; EMPLOYEES; GUARANTEE OF SALARY TO ONE NOT EMPLOYEE

8 December 1955

Where authorized by an election held for that purpose, a hospital, organized under the provisions of Chapter 131 of the General Statutes, may employ specialists in internal medicine and other professional employees to render effective treatment to patients, and may fix the salaries to be paid by the hospital for services rendered by its employees. It cannot, however, guarantee an income to one not under contractual relationship with it.

COUNTIES; EMPLOYEES; WORKMEN'S COMPENSATION ACT; ELECTIVE OFFICERS

26 September 1955

Elective county officers and county officers appointed by the board of county commissioners are not covered by the Workmen's Compensation Act. Employees of such officers are covered by the Workmen's Compensation Act.

COUNTIES; EMPLOYEES; WORKMEN'S COMPENSATION ACT; SELF INSURERS

13 October 1955

A county may become a self-insurer under the Workmen's Compensation Act.

COUNTIES; EXPENDITURES; APPROPRIATIONS FOR AIRPORT PROJECT

7 June 1956

The establishment and maintenance of an airport is a public purpose within the objects of municipal expenditure but it is not a necessary expense and taxes may not be levied for that purpose without a vote of the people.

COUNTIES; EXTRADITION PROCEEDINGS; MISDEMEANOR CASES

18 October 1955

County officers whose travel expense is fixed by statute are entitled only to the travel allowance fixed by the statute in the performance of the duties of their offices within their counties and State. Where extradition proceedings have been instituted in misdemeanor cases, such officers would be entitled to the additional travel allowance provided for in G. S. 15-78.

COUNTIES; FIRE DEPARTMENT; AUTHORITY TO CREATE; SUPPORT OF SAME

22 December 1954

Counties can levy taxes to provide fire protection for rural residents under the provisions of G. S. 69-14 to 69-25 inclusive and G. S. 153-9, Subsection 39.

COUNTIES; FIRE DEPARTMENT, VOLUNTEER

11 May 1956

Since volunteer firemen are covered by the Workmen's Compensation Act, a county may take out insurance to secure its liability arising under the Act. The premiums may be paid by appropriation and a special tax may be levied to pay the costs thereof, if such a tax is necessary.

COUNTIES; FUNDS; DEPOSITS

9 December 1954

The proceeds of sale of county bonds must be deposited in the name of the county in a bank, banks or trust company designated by the county commissioners in this State and secured as required by law.

COUNTIES; FUNDS; EXPENDITURES; PUBLIC PURPOSE; NECESSARY EXPENSE

23 April 1956

Certain funds received by Granville County from the Federal government on account of establishment of Kerr Lake may be used for recreational purposes without a vote of the people. Generally speaking, non-tax revenues may likewise be appropriated to recreation work. However, funds derived from taxes or a pledge of credit cannot be so used without a vote, as prescribed in Article VII, Section 7 of the Constitution.

COUNTIES; FUNDS; EXPENDITURES; PUBLIC PURPOSE;
TOWN OF BATH CELEBRATION

18 August 1955

The holding of the Town of Bath Anniversary Celebration is a public purpose, and Beaufort County would be authorized to expend non-tax revenues for such purpose.

COUNTIES; FUNDS; EXPENDITURES; PAYMENT FOR REIMBURSABLE COSTS OF
CERTIFIED INDIGENT PATIENTS

16 May 1955

A county may provide for payments to a charitable corporation, privately operated, in the county for payments for reimbursement of costs for indigent patients, although the amount will exceed the contract price for which such corporation agreed to provide such services.

COUNTIES; FUNDS; USE OF FUNDS FOR NON-NECESSARY
EXPENSES; CONSTITUTIONALITY

29 March 1955

County surplus funds derived from non-tax sources may be expended for authorized non-necessary expenses.

COUNTIES; HEALTH DEPARTMENT; EXPENDITURE OF COUNTY APPROPRIATION

30 August 1954

County funds appropriated for the health department may be used for conducting clinics for children attending private and parochial schools.

COUNTIES; HOSPITAL; GUARANTEE OF OPERATING COST

20 July 1954

A county is authorized by G. S. 131-126.41 to pledge surplus funds for guaranteeing operating deficits of a county hospital.

A county may levy taxes for the necessary purpose of constructing a health center to house the county health department.

COUNTIES; LIABILITY FOR TORTS

14 March 1955

A municipality is deemed in the exercise of a governmental function when its fire department operates beyond its municipal limits. See G. S. 69-23.

COUNTIES; BOOKMOBILE

28 September 1954

It seems very doubtful that a county would be held liable in tort for the negligence of the driver of a bookmobile owned by a county library set up

under the provisions of Article 8, Chapter 160 of the General Statutes. KEENAN v. COMMISSIONERS, 167 N. C. 356; MANUEL v. COMMISSIONERS, 98 N. C. 9; SMITH v. HEFNER, 235 N. C. 1; BETTS v. JONES, 203 N. C. 590; STEPHENSON v. RALEIGH, 232 N. C. 42.

It is suggested that the General Assembly be called upon to enact legislation similar to G. S. 115-45.1 and Article 15A, Chapter 160 of the General Statutes.

COUNTIES; LIBRARIES

29 April 1955

Maintenance of public libraries is not a necessary expense for which counties may appropriate money, but is a public purpose for which, by statute, they are authorized to make appropriations from nontax revenues.

COUNTIES; LIBRARIES; ESTABLISHMENT; SUPPORT

18 June 1956

A county may establish a public library under the provisions of G. S. 160-65 and make no provision for its support from nontax revenues. It may provide for support exclusively by a special tax levy and, if such levy is not approved by a vote of the people, the library may be abandoned.

COUNTIES; POLICE POWER; REGULATING OPENING AND CLOSING HOURS; BUSINESS ESTABLISHMENTS

11 March 1955

Counties do not have police power to enact ordinances fixing the opening and closing hours of commercial activities in unincorporated sections of the county on Sundays, except for the sale of wine and beer. An Act authorizing counties to exercise such police power would probably be constitutional if enacted on a State-wide basis, and possibly constitutional if a local Act.

COUNTIES; PROPERTY; PURCHASE OF HOME FOR COUNTY HOSPITAL ADMINISTRATOR

16 May 1955

A county may not purchase a house for quarters for the administrator of the county hospital and assume an outstanding mortgage on the same, as this would be creating a debt without a vote of the people—PALMER v. HAYWOOD COUNTY, 212 N. C. 284—and may be a violation of the debt limits of Article V, Section 4, of the Constitution.

COUNTIES; PROPERTY; PURCHASE OF STOCK OF CORPORATION

19 September 1955

The right of a county to purchase certain real property for proper county purposes does not, in the absence of special enabling legislation, authorize a county to purchase all of the stock of a corporation owning real property which the county desires to acquire.

COUNTIES; PUBLIC CONTRACTS; LETTING CONTRACT FOR SCHOOL BUILDING

24 November 1954

Bids for construction of a school building, submitted at the time advertised for bids according to the Superintendent of Education's watch, should not be rejected because of the difference of two minutes in his watch and the Western Union time, provided the bid was submitted before any of the bids were opened.

COUNTIES; PUBLIC CONTRACTS; REQUIREMENT OF ADVERTISEMENT AND BIDS;
CONTRACT FOR PERSONAL SERVICES

21 July 1954

The provisions of G. S. 143-129, regulating the letting of public contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment do not apply to a contract of a county for the personal services of experts to assist in the revaluation of real property for ad valorem tax purposes pursuant to the provisions of G. S. 105-291.

COUNTIES; PUBLICATION OF INFORMATION AS TO COUNTY EMPLOYEES

23 September 1955

There is no legal prohibition to the publication in pamphlet form by a county of information regarding county government, even though such pamphlet will contain the names of county employees, their duties, and salaries.

COUNTIES; RESERVE FUNDS

21 December 1955

There is no general law authorizing counties to create and maintain reserve funds.

COUNTIES; RESERVE FUNDS; PUBLIC LIABILITY

13 October 1955

A county is without power or authority to establish a reserve fund to cover public liability rather than carry public liability insurance.

COUNTIES; RIGHT TO TAKE LEGAL ACTION

20 December 1954

Neither a county nor the board of commissioners of a county have any authority to take any legal action by way of injunction or otherwise to abate the pollution of a stream caused by waste from a municipality and industry in another county where only the people in the vicinity of the polluted streams are directly affected.

COUNTIES; RURAL FIRE PROTECTION; LEVY OF TAXES

14 July 1955

It is thought that if a special rural fire district should be created under the provisions of Article 3A, Chapter 69 of the General Statutes, and a tax for fire protection should be voted under the provisions of that article during the current fiscal year, the special tax provided for in G. S. 69-25.4 could not be levied during the current fiscal year. REYNOLDS v. ASHEVILLE, 199 N. C. 212.

COUNTIES; SALE OF PROPERTY AS SURPLUS

27 October 1955

Under the provisions of G. S. 153-9(14) and G. S. 153-2(4), it is thought that a county without special legislative authorization may in the sound discretion of its Commissioners sell at either public auction or private sale a part of the property heretofore used for county home purposes upon the adoption of a proper resolution, finding as a fact that the property in question is surplus property not needed for any public purpose; and that the proceeds may be used for repairing the buildings on the remainder of the property in order that they may be used for boarding home purposes, and the remainder used for the revaluation of the property within the county for tax purposes. VAUGHN v. COMMISSIONERS, 118 N. C. 636; SOUTHPORT v. STANLY, 125 N. C. 464; and BROWN v. CANDLER, 236 N. C. 576.

COUNTIES; SICK LEAVE; VACATION LEAVE; ACCUMULATED LEAVE

16 March 1956

When a county employment policy includes the granting of vacation leave and sick leave, a person ordinarily would have no right to payment for accumulated sick leave unused at the termination of employment, because the right to sick leave is ordinarily conditioned upon use of such leave on account of sickness. This would also be true in the case of termination of employment by reason of death of an employee, and the deceased employee's estate would not be entitled to any payment by the county with respect to unused accumulated sick leave.

COUNTIES; TAX ANTICIPATION LAWS

30 January 1956

A county may not borrow in anticipation of collection of revenues of a succeeding fiscal year in order to pay appropriations for the current fiscal year.

COUNTY COMMISSIONERS; APPOINTMENTS; CLERK OF BOARD;
REGISTER OF DEEDS

27 June 1956

G. S. 161-23 and G. S. 153-40 authorize a board of county commissioners to appoint some other county officer as clerk to the board. If the county auditor is appointed, he is required to sign each county voucher below the statement to be printed on such voucher as required by G. S. 153-131. This is a duty he performs by virtue of his office as county auditor. Any duties formerly required by the register of deeds as clerk to the board with respect to the signing of vouchers should now be performed by the county auditor as clerk to the board.

COUNTY COMMISSIONERS; APPOINTMENTS; COUNTY PHYSICIAN;
COUNTY HEALTH OFFICER

15 June 1955

A board of county commissioners may fix and determine the salary to be paid a county health officer and a county physician.

If a board of county commissioners appoints a county health officer and fails to appoint a county physician, then, and in such event, the county health officer is required to perform the duties of county physician.

The amount of public funds to be expended by a county health department is controlled by the board of county commissioners.

COUNTY COMMISSIONERS; APPROPRIATION OF FUNDS FOR CONSTRUCTION OF
SUMMER CAMP

3 August 1955

There is no authority for a board of county commissioners to appropriate public funds to aid in the construction of a Summer camp for the organization known as New Farmers of America. Such an appropriation would not be for a public purpose.

COUNTY COMMISSIONERS; AUTHORITY TO APPROPRIATE FUNDS TO
MUNICIPALITY FOR FIRE PROTECTION PURPOSES

29 July 1954

A board of county commissioners is authorized under the provisions of Article 3 of Chapter 69 of the General Statutes to endorse said Article as to the furnishing of fire protection service and to appropriate funds to aid a municipality endorsing such Article for the use of its equipment in rural fire protection service, but it is discretionary with the board of county commissioners as to whether or not it shall make such appropriation and such board cannot be required or compelled to appropriate funds for such purpose.

COUNTY COMMISSIONERS; AUTHORITY TO PURCHASE SITE FOR
COURTHOUSE

22 June 1956

Under the provisions of G. S. 153-9(9), it is thought that a board of county commissioners cannot purchase unconditionally a site for a new courthouse until the provisions of the statute have been complied with; however, it is thought that the board may enter into a binding option agreement in contemplation of compliance with the statute. *HEARNE v. COMMISSIONERS*, 188 N. C. 45; *TROGDEN v. WILLIAMS*, 144 N. C. 192; *SITTERDING v. GIZZARD*, 114 N. C. 108.

COUNTY COMMISSIONERS; CEMETERIES; ABANDONMENT; REMOVAL
OF GRAVES

15 November 1954

Construing together the provisions of G. S. 65-15, G. S. 65-5 and G. S. 65-6, it is thought that when private individuals donate and convey to a board of county commissioners land to be used as a cemetery for the inmates of the county home, the commissioners have the authority to pay

for the removal of the bodies of such persons to such cemetery upon designation by them of the property in question as the burial place for inmates of the county home.

COUNTY COMMISSIONERS; COUNTY ELECTRICAL INSPECTOR; APPOINTMENT

29 June 1956

Where a city electrical inspector is appointed by a board of county commissioners under G. S. 160-122 as a county electrical inspector, the person so appointed is required to take and pass the examination prescribed by said section and otherwise qualify thereunder.

COUNTY COMMISSIONERS; ELECTIONS; RURAL FIRE DISTRICT

26 April 1955

The Board of County Commissioners should conduct elections for rural fire protection in districts organized under G. S. 69-25(1) et seq.

COUNTY COMMISSIONERS; EXPENDITURE OF FUNDS;
GIFTS TO PRIVATE COLLEGE

6 January 1956

In the absence of an enabling act, a county board of commissioners is without authority to expend county funds in making gifts to a private college.

COUNTY COMMISSIONERS; EXPENDITURE OF FUNDS;
EXTRADITION PROCEEDINGS

29 December 1955

The language of the statute requires that the county commissioners pay the cost of returning prisoners to this State in non felony cases. Our Supreme Court has held that in cases where persons are convicted of the criminal offense of violating a town ordinance, that such cases are State prosecutions in the name of the State for violations of the criminal laws of this State, and at the expense of the State, and that such cost may not be charged against a municipality. See BOARD OF EDUCATION v. HENDERSON, 126 N. C. 689.

The board of county commissioners of a county is authorized under G. S. 15-78 to provide appropriate regulations governing under what circumstances it will pay the cost of returning a prisoner to this State for trial in a non felony case regardless of whether or not the case is to be

tried in a city or other county court. The Board is authorized under the statute to pass a regulation providing that it will not pay the cost of returning the prisoner to this State unless proper extradition papers are issued by the Governor for the return of a prisoner to the county for trial.

COUNTY COMMISSIONERS; EXPENDITURE OF FUNDS; RADIO COMMUNICATION
SYSTEM

14 July 1955

Under G. S. 20-196, a board of county commissioners is authorized to purchase and install radio receiving sets in county offices to be used in law enforcement work.

COUNTY COMMISSIONERS; EXPENDITURE OF FUNDS; RECORDERS' COURTS

6 July 1955

Under the Public Laws of 1909 (Chapter 308) provision was made for paying the expenses of the Recorder's Court of New Hanover County, which provision is broad enough to include a reasonable allowance for the office expenses of the Judge and Solicitor of the Court. The Board of Commissioners of New Hanover County desire to contribute to this expense and have appropriated the sum of \$50.00 per month for each office of the Judge and Solicitor, and it is thought that this would be a valid expenditure under the statute since the basic provisions as to expenses appearing in the 1909 statute do not seem to have ever been repealed.

COUNTY COMMISSIONERS; FILLING VACANCIES

20 March 1956

Under the provisions of G. S. 153-6, the Clerk of the Superior Court is authorized to fill vacancies occurring in the Board of County Commissioners for the remainder of the unexpired term and not simply until the next general election.

COUNTY COMMISSIONERS; HOUSE NUMBERS

4 August 1955

There is no general statutory authority for a county board of commissioners to assign house numbers to persons living on streets, roads and highways not within the corporate limits of any municipality.

COUNTY COMMISSIONERS; LIABILITY FOR AUTOPSY

16 June 1955

If a coroner causes an autopsy to be performed without first having an inquest, the subsequent performance of the autopsy is unauthorized. However, if he contracts with a toxicologist who simply views the remains, the claim of the toxicologist may legally be paid by the county. Also, it is very doubtful that in any case can the county commissioners be sued in tort since these actions are governmental by nature in the absence of bad faith, corruption or malice.

COUNTY COMMISSIONERS; MEETINGS

14 June 1956

Unless prohibited by statute, boards of county commissioners may hold executive sessions. There is no limitation on meetings of county commissioners analagous to the limitation on city officials. Some counties, as, for instance, Forsyth (Chapter 81, Laws of 1947), have statutes prohibiting executive sessions. See also Chapter 677, Laws of 1955. These statutes do not prohibit informal gatherings of citizens for the purpose of discussing governmental affairs, even though those who attend the informal conferences happen to be some or all of the board of commissioners of the county. No action can be taken at such informal conferences which binds the county. They are not acting officially, are not entitled to compensation for meeting, and are entitled to none of the prerogatives of the office of county commissioners.

COUNTY COMMISSIONERS; MEMBERSHIP OF BOARD; QUALIFICATIONS

24 February 1955

The qualifications for voting and holding office would be thirty days residence in the voting precinct or ward, and a person having such residence and otherwise qualified would be entitled to vote and hold office in a municipality.

COUNTY COMMISSIONERS; NECESSARY EXPENSE; PUBLIC PURPOSE

6 July 1954

The Board of County Commissioners cannot expend tax funds for a hospital since it is not a necessary expense. The Board, however, can expend any surplus funds from nontax sources or any funds of any other character from nontax sources since it is a public purpose.

COUNTY COMMISSIONERS; NECESSARY EXPENSE; PUBLIC PURPOSE

27 July 1954

A county rescue squad is not authorized by statute nor is its activities supported by any decision of the Supreme Court: Therefore, a board of county commissioners cannot levy a tax to support such a program nor can it use money derived from ABC funds since this is not a public purpose nor a necessary expense.

COUNTY COMMISSIONERS; PURCHASE OF RADIO EQUIPMENT

8 June 1956

Municipalities and counties can only purchase equipment costing in excess of \$1,000 upon sealed bids. Neither a municipality nor a county can arbitrarily write specifications so that only one manufacturer can meet the specifications, nor arbitrarily assign quality and time of delivery as a basis for awarding the contract to other than the low bidder. The statute requires good faith compliance with its provisions.

COUNTY COMMISSIONERS; ROADS; REGULATION OF WEIGHT CARRIED

26 October 1954

The Board of County Commissioners do not have authority to limit the truck weight load which may be carried on sub-division streets dedicated to the public use but neither a part of the State Highway System nor subject to the jurisdiction of municipal authorities.

COUNTY COMMISSIONERS; SALE OF COUNTY HOME PROPERTY

2 June 1955

County home property may be sold by the county commissioners and the proceeds of sale paid into the general fund of the county.

COUNTY COMMISSIONERS; SALE OF SURPLUS PROPERTY

16 September 1954

Under the provisions of G. S. 153-9(14) and G. S. 153-2(4), it is thought that the Board of County Commissioners may, in its discretion, sell at private sale surplus real and personal property belonging to the county after the adoption of a proper resolution, finding as a fact that the property in question is surplus property not needed for any public purpose.

The above fact situation is to be distinguished from the situations discussed in *SOUTHPORT v. STANLY*, 125 N. C. 464 and *VAUGHN v. COMMISSIONERS*, 118 N. C. 636.

COUNTY COMMISSIONERS; VOTING BY PROXY

2 December 1955

There is no authority by which a County Commissioner who is absent from a meeting of the Board of County Commissioners because of illness can vote by proxy.

COURTS; COMMISSIONS ALLOWED

13 May 1955

It is thought that G. S. 105-93(d) relating to the process tax applies to civil actions only. Since G. S. 7-274 provides that the Clerk of the Superior Court is ex-officio Clerk of the General County Court, it is thought that the commissions fixed by G. S. 105-93(d) go to the Clerk and not to an Assistant Clerk unless a different arrangement exists between the Clerk and the Assistant Clerk.

COURTS; COUNTY; APPOINTMENT OF JUDGE; JURISDICTION

26 September 1955

The term of office of a judge of a civil county court, established under Article 35 of Chapter 7 of the General Statutes, runs for a period of two years from the date of his appointment by the Governor.

Although the Article apparently authorizes a jury of six to determine the issues in a divorce proceedings, it is thought that the better practice would be for the judge of the court to submit such issues to a jury of twelve, which he has the right to do under the statute.

COURT; COSTS; TURNKEY FEES

29 April 1955

A turnkey fee should be assessed only in those cases when the prisoner is admitted to jail and when he is finally released and given his freedom. A turnkey fee should not be charged when a prisoner is taken out of the jail and brought to the courtroom for trial and then returned to the jail to serve his prison sentence.

COURTS; JUSTICE OF THE PEACE; APPEALS

19 October 1954

It is thought that an appeal in either a civil or criminal case from a justice of the peace in a county in which a General County Court has been established must be taken to the Superior Court and not to the General County Court. The provisions of G. S. 7-243 have no application. Instead, it is thought that the provisions of G. S. 7-177, G. S. 15-177 and G. S. 1-299 are applicable. *STATE v. BALDWIN*, 205 N. C., 174; *McNEELEY v. ANDERSON*, 206 N. C. 481; *RHYNE v. LIPSCOMBE*, 122 N. C. 650, and *STATE v. RAY*, 122 N. C. 1097.

COURTS; JUSTICES OF THE PEACE; JURISDICTION

5 November 1954

Failure of a motor vehicle purchaser to obtain new registration is a misdemeanor. G. S. 20-173. City police within their jurisdiction have the right to arrest for this offense. G. S. 20-183. The offense is punishable by a fine not exceeding \$100 or by imprisonment not exceeding 60 days or both. A Justice of the Peace does not have jurisdiction to try such a charge.

COURTS; JUSTICE OF THE PEACE; WITNESS FEES; ARREST FEES

7 October 1954

When a Justice of the Peace charges defendants costs in excess of those authorized by the statute, the recovery of these sums is a matter between the Magistrate and the various defendants and there is no duty on any county officials to take action to require refunds.

COURTS; JUVENILE COURT; APPOINTMENT OF JUDGE

8 May 1956

Under G. S. 110-22, as amended in 1955, the clerk of the superior court is without authority to act as judge of the juvenile court until he is appointed to that office by the board of county commissioners.

COURTS; JUVENILE COURT; CUSTODY OF CHILDREN; SERVICE OF SUMMONS

11 February 1955

The juvenile court has jurisdiction to determine and award custody of children under sixteen years of age whose parents are both in prison.

Reference G. S. 110-21, Subsection 3. The parents should be served with notice of the proceeding as provided in G. S. 110-28.

COURTS; JUVENILE COURTS; JURISDICTION

17 February 1956

A Juvenile Court has jurisdiction to award custody of a child pending an appeal from dismissal of a petition in an adoption proceeding. An appeal from an order of a Juvenile Court awarding custody of a child probably does not have the effect of staying that judgment.

COURTS; JUVENILE COURT; JURISDICTION; MARRIAGE

25 February 1955

A juvenile court which acquires jurisdiction of a child less than sixteen years of age and places such child on probation is not deprived of jurisdiction by the marriage of the child. See G. S. 110-21.

COURTS; JURISDICTION; DOMESTIC RELATIONS COURT

14 April 1955

PHIPPS v. VANNOY, 229 N. C. 639, (1948), defines the areas in which the juvenile court does not have exclusive original jurisdiction in custody controversies involving juveniles, to wit, those situations covered by G. S. 17-39 and G. S. 50-13. The 1953 General Assembly amended 50-16 so as to probably provide another exception to the "exclusive original jurisdiction" of the juvenile courts. (see **PHIPPS v. VANNOY**, *supra*; G. S. 17-39; G. S. 50-13; and G. S. 50-16). Quaere, as to whether the same exceptions apply to the "exclusive original jurisdiction" granted the domestic relations courts by G. S. 7-103.

See also **IN RE PREVATT**, 223 N. C. 833, (1944), and **IN RE BUMGARDNER**, 228 N. C. 639 (1948), to the effect that where parents bring the matter of custody of a juvenile before the juvenile court, that an order of said court affecting custody is reviewable on appeal, but may not be disregarded as void. The same principles would seem to apply to a domestic relations court.

COURTS; JURISDICTION MAYOR'S COURT

13 October 1954

The Mayor's court of Hope Mills does not have jurisdiction to try charges of reckless driving.

COURTS; JUVENILE; DETENTION FACILITIES

6 March 1956

A room in a county jailhouse, though separated from that part of the structure used to house adult persons, may not be used for the detention of juveniles under sixteen years old except in the following two cases: (1) Where a juvenile over fourteen years of age is charged with the commission of a felony for which the punishment may be by imprisonment for more than ten years. (2) Where a juvenile over fourteen years of age is charged with the commission of a felony for which the punishment may be by imprisonment of not more than ten years, and the judge of the juvenile court decided that the juvenile should be bound over to the Superior Court.

COURTS; MIXED TERM

18 August 1955

G. S. 7-70, as amended by Chapter 1195 of the Session Laws of 1951, is superseded by Chapter 1373 of the Session Laws of 1955 with respect to the schedule of terms of court and the kinds of cases, civil or criminal, which may be tried at a term of court.

COURTS; PROCESS TAX

31 May 1955

Under the provisions of G. S. 105-93 (e) it is thought that the \$2.00 process tax is not to be collected by a city county court in a case coming within the concurrent jurisdiction of a justice of the peace.

COURTS; RECORDER'S COURT; AUTHORITY TO ISSUE WARRANTS

16 July 1954

Chapter 998, Session Laws of 1953, places the municipalities of Johnston County under the provisions of Article 24, Subchapter VI, Chapter VII, of the General Statutes. G. S. 7-198 authorizes the recorder, vice recorder or presiding justice of the court or the clerk or deputy clerk of such court to issue process. Therefore, it is thought that since the Mayor's Court of Clayton has been superseded by a Municipal Recorder's Court, the mayor does not have the authority to issue process in criminal cases to be heard in the Recorder's Court.

COURTS; RECORDER'S COURT; ESTABLISHMENT

25 January 1955

A special act creating a municipal recorder's court would be a violation of Article II, Section 29, of the Constitution of North Carolina, and the court would have no power to act. An existing municipal recorder's court may be abolished by the governing body of the town and a new court created under the general statute providing for the establishment of such courts. The statute requires that such court have a prosecuting attorney. A special statute providing that a court already created need not have a prosecuting attorney, or a special statute prescribing the fees of such a court after it is established would not violate Article II, Section 29, of the Constitution.

COURTS; RECORDER'S COURTS; JURISDICTION

28 December 1955

In North Carolina, an inferior court is ordinarily described as having final jurisdiction over a criminal offense when such court has jurisdiction to try a person for an offense and to impose sentence upon conviction, even though the right of appeal to a higher court exists.

COURTS; RECORDERS' COURTS; QUALIFICATION OF PROSECUTING ATTORNEY;
RESIDENCE REQUIREMENT

3 November 1955

The prosecuting attorney of a municipal recorder's court must be a resident of the municipality in which such recorder's court is established.

COURTS; MUNICIPAL RECORDER'S COURTS; QUALIFICATION OF RECORDER;
RESIDENCE

31 October 1955

Under G. S. 7-186, the recorder of a municipal recorder's court established under Article 24 of Chapter 7 of the General Statutes is required to be a qualified elector of the municipality in which such court is established.

COURTS; COUNTY RECORDER'S COURT; REQUIREMENT OF STAY BOND
ON APPEAL

24 May 1956

A county Recorder's Court orders sale of a motor vehicle under G. S. 18-6, which has been seized for illegal transportation of alcoholic beverages, and

the question is whether the court has authority to require a bond or undertaking before staying the order of sale, pending appeal to the Superior Court. There appears to be no express statute directly in point; however, it is probable that the judge of the Recorder's Court has authority to require the owner of the vehicle in question or other claimant protesting the sale to file a sufficient undertaking, pending appeal to the Superior Court, in order to stay the actual sale of the vehicle. This action would be appropriate rather than storing the vehicle for several months while it greatly depreciates in value, to the detriment of the County School Fund which is entitled to the net proceeds from such sales, or to the detriment of any valid lienholder.

COURTS; RECORDER'S COURT; RESIDENCE REQUIREMENTS OF RECORDER

2 May 1956

It is thought that when the judge of a Municipal Recorder's Court removes from the city and establishes domicile in another community, he becomes disqualified to hold the office of Recorder. G. S. 7-186; STATE v. CHAPLIN, 228 N. C. 705; STATE v. GRIZZARD, 89 N. C. 115.

COURTS; COUNTY RECORDER'S COURTS; SELECTION OF PROSECUTING ATTORNEY

30 November 1955

Prosecuting attorneys of recorder's courts, established under Chapter 7, Article 25, of the General Statutes, may be appointed or elected by the county board of commissioners in all but Franklin County.

CRIMINAL LAW; ABANDONMENT AND NONSUPPORT

18 November 1954

The fact that custody of minor children has been awarded to another does not relieve the father of the legal liability to support his children. He would be subject to indictment for abandonment and failure to provide adequate support if demand is made and he fails to provide such support for his minor children.

CRIMINAL LAW; ABANDONMENT AND NONSUPPORT; PUNISHMENT

16 November 1955

The crime of abandonment and nonsupport, set out in G. S. 14-322, is a misdemeanor, and such offense is not within the jurisdiction of a justice of the peace for trial purposes.

CRIMINAL LAW; ARMY; USE OF WORD "ARMY" IN NAME OF MERCANTILE
ESTABLISHMENT

19 August 1954

G. S. 14-117.1 makes it unlawful for any person to use the words "army" or "navy", or either, or both, in the name or as a part of the name of any mercantile establishment in this State not in fact operated by the United States government or duly authorized agency thereof.

CRIMINAL LAW; ASSAULT WITH A DEADLY WEAPON; MISDEMEANOR
AND FELONY

5 July 1955

An assault with a deadly weapon in this jurisdiction is a misdemeanor and would not amount to a felony unless there was an intent to kill and the infliction of serious injury not resulting in death.

CRIMINAL LAW; ATTEMPT TO COMMIT A MISDEMEANOR

7 July 1954

An attempt to commit a misdeameanor is a misdemeanor, both at common law and under our statute.

CRIMINAL LAW; CARRYING WEAPONS CONCEALED

6 October 1954

There is no law in this State which provides for a permit to carry a weapon concealed.

It is unlawful for a person to carry a weapon concealed about his person anywhere in this State.

CRIMINAL LAWS; CARRYING WEAPONS CONCEALED

12 July 1954

It is not unlawful for a person to carry a pistol from his place of business to his home and return, provided the pistol is not carried concealed about the person. No permit is required for a person to carry a pistol, but in carrying the same it must not be concealed about one's person.

If a person signs a bad check and the same is put in circulation, it would be violative of the law of this State against the issuing of worthless checks.

CRIMINAL LAW; CARRYING WEAPONS CONCEALED

9 June 1955

The gist of the offense of carrying weapons concealed is the practice of wearing weapons concealed about the person. If the weapon is carried openly, the defendant would not be guilty. Whether or not a weapon in a given case is concealed from the public is a question for the jury to decide. Although the statute says the weapon must be concealed "about his person," this does not necessarily mean that it must be concealed on his person. If the weapon is within reach and control of the defendant and is concealed, I think it would be a sufficient state of facts to be an offense although the weapon might not be actually on the person of the defendant.

CRIMINAL LAW; CARRYING WEAPONS CONCEALED; GLOVE COMPARTMENT

20 June 1955

Our Court has not passed upon the question of whether or not carrying a weapon in the glove compartment of a motor vehicle is violative of the law. However, this office has rendered numerous opinions to the effect that carrying a weapon in the glove compartment of an automobile would perhaps be held to be carrying the same concealed if the question was tested in the Courts.

CRIMINAL LAW; DRIVING WITHOUT LICENSE; JURISDICTION
OF JUSTICE OF THE PEACE

31 May 1956

A justice of the peace does not have jurisdiction to try a charge of driving an automobile without having an operator's license.

CRIMINAL LAW; DRUNKEN DRIVING

17 August 1954

When a person is arrested for public drunkenness and later arrested for drunken driving which latter offense occurred on the same day at a different place and a different time, he may be tried for both offenses.

CRIMINAL LAW; DRUNKEN DRIVING; SECOND OFFENSE; HOW PROVEN

17 October 1955

When a person is charged with a second offense of drunken driving, the record of conviction of the first offense (consisting of the warrant with the

judgment written on the back of the same) may be introduced in evidence as proof of the first offense.

CRIMINAL LAW; FAILURE TO LIST DOG FOR TAXES

22 May 1956

A late listing of dogs for taxes does not cure the criminal offense of failure to list at the proper time.

CRIMINAL LAW; FOOD, DRUG AND COSMETIC ACT; CONDITIONS PRECEDENT

17 September 1954

It is thought that the provisions of G. S. 106-126 are administrative and not jurisdictional and that a prosecution under G. S. 106-122 can be maintained without showing that the provisions of G. S. 106-126 have been complied with. UNITED STATES v. COMMERCIAL CREAMERY COMPANY, 43 Fed. Sup. 714; UNITED STATES v. MORGAN, 222 U. S. 274, and UNITED STATES v. AMERICAN LABORATORIES D. C. 222 Fed. 104. STATE v. LOESCH, 237 N. C. 611.

CRIMINAL LAW; FORTUNE TELLING; STATUTORY CONSTRUCTION

20 June 1956

Chapter 674 of the Session Laws of 1947, relating to fortune telling in Lenoir, Johnston and Pasquotank Counties is not repealed by Chapter 314 of the Session Laws of 1951 relating to fortune telling in thirty-four other enumerated counties.

CRIMINAL LAW; GAMBLING; COON ON A LOG

23 July 1954

Field trials of coon dogs, using the procedures described in letter from Sheriff Logan, in which the coon is not injured in any way, or permitted to engage in any contact with the dogs, would possibly not violate our statute. Betting on coon dog contests would violate our statutes against gambling.

CRIMINAL LAW; GAME LAWS; CONFISCATION OF SHOTGUNS

3 November 1955

A shotgun used by a hunter in violation of the game laws may not be confiscated upon a conviction of any game law offense, but only upon conviction of the offenses set forth in Subsection (f) of G. S. 113-91. Hunting

squirrels in the daytime out of season with a gun is not included in the list of offenses with respect to which confiscation applies. However, under the provisions of Subsection (g) of G. S. 113-91, the gun could be taken and held as evidence until the trial.

CRIMINAL LAW; GAME LAWS; FIRE-LIGHTING; CONFISCATION OF GUNS

5 June 1956

There is no statutory time limit within which an owner must act to reclaim a gun seized in the course of illegal hunting by some other person.

CRIMINAL LAW; GAME LAWS; USE OF TELEPHONE MAGNETS IN FISHING

26 August 1954

The use of a device emitting electric power for the purpose of catching catfish in commercial waters is prohibited by G. S. 113-174.12.

CRIMINAL LAW; GAME LAWS; WATERFOWLS

8 November 1955

Under the provisions of Chapter 1054 of the Sessions Laws of 1955 violation of migratory waterfowl shooting hours provisions is a misdemeanor within the jurisdiction of a justice of the peace.

CRIMINAL LAW; HOMICIDE; INVOLUNTARY MANSLAUGHTER; PUNISHMENT

18 April 1955

Under the statute making Involuntary Manslaughter a milder form or lesser degree of Manslaughter it is thought that the limit of punishment would be 20 years but that the minimum punishment can be less than the minimum set for Manslaughter, the object being to provide less punishment for Involuntary Manslaughter in the discretion of the Court.

CRIMINAL LAW; HOMICIDE; MOTOR VEHICLES; RACING

9 August 1955

Racing automobiles on an unfinished highway not open to the public is not a violation of the 1955 prohibition against racing, since such a road is not a "highway". Driving upon such a road is a misdemeanor if the Highway Commission has erected signs showing the road to be closed. Racing upon such a road which results in death is involuntary manslaughter. Each driver is a principal in such crime even though not the driver of the vehicle in collision.

CRIMINAL LAW; INSANITY CAUSING INABILITY TO PLEAD

5 January 1956

When defendant has been adjudged by a jury as unable to plead due to insanity, but is later restored to sanity according to the proper hospital authorities, it is not necessary that the State on a subsequent trial instigate further adjudication on the question of insanity before or during trial.

CRIMINAL LAW; KIDNAPPING OF CHILD BY PARENT

29 March 1955

A parent is probably not indictable for the offense of kidnapping under G. S. 14-39 where such parent takes into his custody his own child, even though in the taking the elements of the offense of kidnapping may be present.

CRIMINAL LAW; LARCENY; TAKING PROPERTY

4 April 1956

The mere fact that a person who steals money retains it in his possession for only a short time does not prevent such theft from constituting larceny if the other elements of larceny are present.

CRIMINAL LAW; LOTTERY LAWS; PROMOTIONAL SCHEMES TO RAISE FUNDS
FOR CONSTRUCTION OF FIRE STATION

14 July 1955

In order to constitute a lottery, there must be three elements present, to wit: (1) a prize; (2) a consideration; and (3) the winner of the prize is to be determined by some formula of chance. See *STATE v. LIPKIN*, 169 N. C. 265. This is true regardless of whether the holder of the ticket is present to receive the prize or whether the proceeds from the lottery are to be expended for some public purpose.

CRIMINAL LAW; PRIZE FIGHTING

10 November 1954

Under G. S. 14-271, it is a criminal offense for any two or more persons to engage in a prize fight, sparring match or glove or fist contest for money or other valuable prize or stake. This statute also makes it unlawful for any person to aid or abet in any way whatever in promoting prize fights.

CRIMINAL LAW; PRIZE FIGHTING; GOLDEN GLOVES TOURNAMENT

15 November 1954

The provisions of G. S. 14-271, prohibiting prize fighting and wrestling for a valuable stake or consideration, do not apply to those contests designated as "The Golden Gloves" since the winners in these contests do not receive a valuable prize or remuneration.

CRIMINAL LAW; PUBLIC DRUNKENNESS

31 August 1954

The language of G. S. 18-51 is sufficiently broad to make it unlawful for anyone to become intoxicated in any public place in North Carolina.

CRIMINAL LAW; PUBLIC DRUNKENNESS; DRUNK AND DISORDERLY

30 September 1955

G. S. 14-334 contemplates pronouncement against a person who is both drunk and disorderly.

CRIMINAL LAW; PUBLIC DRUNKENNESS; PUNISHMENT

8 September 1955

Under the provisions of G. S. 14-334 the crime of being drunk and disorderly in a public place is punishable by a fine of not more than \$50.00 or imprisonment for not more than 30 days, in the discretion of the court.

CRIMINAL LAW; PYROTECHNICS; CAPS

16 July 1954

Explosive caps designed to be fired in toy cap pistols may not be legally sold or possessed in this State. There is no legal prohibition against the sale of toy cap pistols.

CRIMINAL LAW; PYROTECHNICS; CAPS

28 July 1954

Explosive caps containing any amount of explosives and designed to be fired in toy cap pistols or rifles are considered pyrotechnics and may not be legally sold or possessed in this State.

CRIMINAL LAW; PYROTECHNICS; CAPS

11 July 1955

Explosive caps designed to be fired in toy cap pistols may not be sold, possessed or exhibited in those counties exempt from Senate Bill No. 296, 1955 General Assembly, as set out in Section 2 of said Act.

CRIMINAL LAW: PYROTECHNICS; SPARKLERS

20 September 1955

The type of fireworks known as "sparklers" comes well within the definition of pyrotechnics set forth in Article 54 of Chapter 14 of the General Statutes.

CRIMINAL LAW; RECKLESS DRIVING; ADMISSIBILITY OF EVIDENCE
OF ALCOHOL

15 February 1955

Although the law is not entirely clear on the question it is probable that evidence of intoxication is not admissible in a trial on a charge of careless and reckless driving.

CRIMINAL LAW; RECKLESS DRIVING; PURSUIT OF VIOLATOR
BY PRIVATE PERSON

7 February 1956

At common law, the driving of a carriage in a crowded or populous street in such a manner as to endanger the inhabitants has been held to be an indictable offense amounting to a breach of the peace. By analogy, this rule has been applied to automobiles and approved by the North Carolina Court by way of dictum.

A private citizen may arrest without warrant to suppress and prevent a breach of the peace. This means that either a peace officer or a private person may arrest anyone who in his presence is actually committing or threatening to commit a breach of the peace. If, however, the offense is completed, there is no justification for an arrest without warrant.

CRIMINAL LAW; SALE OF CONVICT-MADE GOODS

15 November 1954

The provisions of G. S. 14-346, relating to convict-made goods, do not apply to articles such as leather wallets made and sold by prisoners during their recreation hours.

CRIMINAL LAW; SENTENCE; ESCAPE; LOSS OF GAINED TIME

29 June 1956

It is a felony for a felon to escape from imprisonment. It is a misdemeanor for a misdemeanor to escape the first time, and a felony for a second offense of escaping by a misdemeanor.

CRIMINAL LAW; SLOT MACHINES; BOWLING, RIFLE RANGE, SHUFFLE BOARD

31 May 1956

Coin-operated pin-ball machines which offer a chance to make varying scores or tallies such that wagers might be made upon the outcome of the game are illegal.

CRIMINAL LAW; STATE FLAG; USE OF FACSIMILE PROHIBITED

17 January 1956

Use of a facsimile or representation of the State flag on a "car tag" is expressly prohibited by G. S. 14-381, which makes the use of the State flag or any representation of the State flag for advertising purposes a misdemeanor.

CRIMINAL LAW; VAGRANCY; PUNISHMENT

5 June 1956

A first offense of vagrancy is punishable by a maximum fine of \$50 or by imprisonment for not more than thirty days. Subsequent offenses are punishable by fine or imprisonment, or both, in the discretion of the court.

CRIMINAL LAW; WEAPONS; PERMITS

9 June 1955

Before a person may secure a permit for the purchase of a pistol, he must satisfy the clerk of the superior court that he requires the possession of the same for the protection of his home.

CRIMINAL LAW; WEAPONS; PERMITS; PERMITS TO CARRY WEAPONS

14 April 1955

There is no law in this State which requires that a person secure a permit to carry a weapon, concealed or otherwise. There is a statute

which requires a person who purchases a pistol to secure a permit from the clerk of the superior court to do so. There is no law in this State which requires guns to be registered.

CRIMINAL LAW; WORTHLESS CHECK

21 July 1954

The fact that payment has been stopped on a check does not make the drawer guilty of the offense of drawing and issuing a worthless check. Neither does this fact constitute a defense against that charge. The fact that the article purchased has been returned does not constitute a defense against that charge.

CRIMINAL LAW; WORTHLESS CHECKS; MAXIMUM PUNISHMENT

9 April 1956

In some counties the maximum punishment for giving a worthless check in an amount of less than \$50.00 is a fine of \$50.00 or imprisonment for 30 days. In other counties there is no statutory maximum.

CRIMINAL PROCEDURE; APPEAL

29 June 1955

It is the generally accepted rule in North Carolina that an appeal may be taken from a judgment rendered out of term within ten days after notice thereof, and from a judgment rendered in term within ten days after its rendition, unless the record shows an appeal taken at the trial.

CRIMINAL PROCEDURE; APPEALS; PERFECTING APPEAL; COMMITMENT

1 December 1955

A defendant who has given notice of appeal should not be committed so as to commence serving his sentence until the time has expired within which he would be permitted to furnish an appeal bond or to secure an order permitting an appeal *in forma pauperis*.

CRIMINAL PROCEDURE; APPEAL; STATUTE OF LIMITATIONS ON TRIAL OF APPEALS

17 August 1955

Upon appeal to the Superior Court on conviction of a misdemeanor in an inferior court, defendant may be tried without indictment by a grand

jury; and G. S. 15-1, a statute of limitations prescribing the time within which a bill of indictment must be filed, does not apply.

CRIMINAL PROCEDURE; APPEAL; WITHDRAWAL WITHOUT INDICTMENT

23 August 1955

When a defendant, who has been convicted in the Recorders Court, appeals to the Superior Court and then withdraws the appeal, he is probably entitled to take an appeal within the 10-day period allowed under the law.

CRIMINAL PROCEDURE; ARREST; DOG WARDEN

27 July 1954

A dog warden is authorized to make arrests and serve other process in connection with the enforcement of the laws relating to the ownership and control of dogs.

CRIMINAL PROCEDURE; ARRESTS; WITHOUT WARRANT FOR MISDEMEANOR

7 June 1956

An officer may arrest a drunk driver without a warrant.

CRIMINAL PROCEDURE; ARREST; WITNESSES; ATTENDANCE AT FUNERAL;
COPIES OF COURT DOCUMENTS

26 June 1956

(1) There are many circumstances where it would be lawful for an officer to make an arrest without a warrant outside his home county. In any event, even if the arrest were unlawful, such fact would not ordinarily affect the validity of the trial of the person so arrested.

(2) Ordinarily a defendant would be able to secure the attendance of necessary witnesses through subpoena.

(3) Although it is my understanding that the prison authorities sometimes permit prisoners to attend funerals of close relatives, there is no law requiring the granting of such a privilege.

(4) I think you would be able to secure copies of the appropriate court papers which you are interested in if you would address your request to the Clerk of the Court in which you were tried and, as you indicate, tender whatever fees might be necessary.

CRIMINAL PROCEDURE; BONDS

9 January 1956

When a person is arrested on a charge of speeding, such person may properly be committed to jail if he fails or refuses to furnish bond.

CRIMINAL PROCEDURE; BOND; ASSIGNMENT OF JUDGMENT

10 August 1954

Where the sureties on an appearance bond held for discharge of judgment against them because of liability on such bond, they should have the judgment assigned to a trustee for their benefit to the end that they may proceed against the principal. The fact that a principal does not sign an appearance bond is an irregularity, but it does not affect the liability of the sureties thereon.

CRIMINAL PROCEDURE; BOND; JUSTIFICATION

9 January 1956

When an appearance bond is furnished for a defendant in a criminal action, the person justifying with respect to the bond is not required to state that he is worth double the amount of the bond over and above liabilities and exemptions allowed by law, but merely that he is worth the amount of the bond over and above such liabilities and exemptions.

CRIMINAL PROCEDURE; CERTIFICATE FROM SUPREME COURT AFFIRMING
JUDGMENT BELOW

23 January 1956

In criminal cases, where a defendant is given an outright sentence to prison and there is no suspension of judgment or conditions prescribed therein, and said sentence is affirmed by the Supreme Court, there is nothing further to be done in the court below, and the clerk of the superior court should issue a commitment and deliver the same to the sheriff in order that the sentence may be put into effect.

CRIMINAL PROCEDURE; EVIDENCE; WIRE TAPPING

13 July 1955

Evidence obtained by wire tapping is competent in this State under the common law.

CRIMINAL PROCEDURE; PRELIMINARY EXAMINATION OF DEFENDANT; WAIVER
OF PRELIMINARY EXAMINATION

6 July 1955

Under the code of criminal procedure if a justice of the peace has final jurisdiction over the offense charged, he proceeds to try the accused and determine his guilt or innocence; if the justice of the peace does not have final jurisdiction he proceeds by way of preliminary examination to determine probable cause, but the accused may waive preliminary examination if he so desires.

CRIMINAL PROCEDURE; REVIEW OF CONSTITUTIONALITY OF CRIMINAL TRIAL;
PAYMENT OF COUNSEL FEES BY COUNTIES

9 September 1954

Under the language contained in the last sentence of G. S. 15-219, when a court has fixed the compensation to be paid counsel for the defendant, such compensation is required to be paid by the county in which the conviction occurred.

CRIMINAL PROCEDURE; RIGHT TO JURY TRIAL

24 April 1956

When a recorder's court affords jury trials in misdemeanor cases and the judge sits as a committing magistrate in felony cases, a defendant cannot be deprived of his right of jury trial in a misdemeanor case merely because a felony charge has also arisen out of the same fact situation—such, for example, as a combination of drunken driving and felonious hit-and-run driving.

CRIMINAL PROCEDURE; WITHOUT OATH; SEARCH WARRANTS

12 April 1955

Under G. S. 15-27, it is provided that any officer who shall sign and issue or cause to be signed and issued a search warrant without first requiring the complainant or other person to sign an affidavit under oath and examining said person or complainant in regard to the issuance of a search warrant for intoxicating liquor shall be guilty of a misdemeanor.

CRIMINAL PROCEDURE; SEARCH WARRANTS; REQUISITES FOR AFFIDAVITS

21 July 1954

A search warrant signed by an acting justice of the peace, who is a desk sergeant, the arresting officer having first given him the information under oath as to the possession of intoxicating liquor, is legal and valid.

CRIMINAL PROCEDURE; SEARCH WARRANTS

26 April 1955

Officers executing a search warrant may search the premises within the scope of the description and ordinarily may not search any other place, person or thing.

CRIMINAL PROCEDURE; SEARCH WARRANTS; GAMBLING DEVICES;
VALIDITY OF WARRANT

18 November 1955

In order to justify the issuance of a search warrant for gambling devices, it is not sufficient that a person states that he has good reason to believe certain gambling devices are in a certain place, but there must be testimony as to specific facts which would enable the person issuing the warrant to conclude that there is reasonable cause to suspect the possession of gambling devices at a particular place.

CRIMINAL PROCEDURE; SEARCH WARRANTS; HIGHWAY PATROLMEN; POWERS

6 January 1956

Although it is possible that a highway patrolman could not qualify under G. S. 18-13, for obtaining a liquor search warrant as "an officer charged with the execution of the law," it would still be possible for such a patrolman to obtain a liquor search warrant under the provisions permitting the "filing of a complaint under oath by a reputable citizen."

CRIMINAL PROCEDURE; SEARCH WARRANTS; INTOXICATING LIQUOR

16 November 1955

An officer who secures a liquor search warrant and discovers liquor in the course of a search made pursuant thereto is required by statute to seize such liquor and "keep the same subject to the order of the court."

CRIMINAL PROCEDURE; SEARCH WARRANTS; SEARCHES AND SEIZURES; INVALID
EVIDENCE

11 October 1955

When a valid search warrant is issued and an officer later substitutes a different name in the warrant so as to purport to authorize the search of a different house from the one originally designated, such search warrant is invalid and evidence obtained as a result of a search made pursuant to

such invalid warrant is inadmissible in evidence. Likewise, if the complainant or other person furnishing the information upon which the issuance of the search warrant is based was not placed under oath, such search warrant is likewise invalid and evidence obtained as a result of a search made pursuant to such invalid search warrant is inadmissible in evidence.

CRIMINAL PROCEDURE; SEARCH WARRANTS; NUMBER OF SEARCHES ON ONE WARRANT; CONSENT TO SEARCH

16 January 1956

When a search of certain premises has been made pursuant to a search warrant, no second or additional search may later be made pursuant to the same search warrant.

CRIMINAL PROCEDURE; SEIZURE OF FEDERAL LIQUOR LICENSE

13 April 1956

Inasmuch as a federal license to sell liquor is, under the North Carolina statutes, *prima facie* evidence of selling liquor, a federal liquor license may be seized as evidence when found in a dwelling in the course of a search for liquor which search was being made pursuant to a valid liquor search warrant.

CRIMINAL PROCEDURE; SEARCH WARRANTS; WITHOUT WARRANT

29 July 1954

When an officer has information that the occupant of a certain house on a certain street is in possession of illegal whiskey and the officer does not know the occupant's name and is unable to obtain it, it is thought that a search warrant may be issued under the provisions of G. S. 18-13, provided the place to be searched and the liquor to be seized is adequately described. Article I, Section 15, North Carolina Constitution. *MEAD v. BOYD*, 19 N. C. 521; *Machen's Law of Search and Seizure*, pages 26 and 27; *STATE v. BELK*, 76 N. C. 10; *STATE v. CAMPBELL*, 107 N. C. 948. However, under the above circumstances, it is thought that the officer does not have the authority to arrest the occupant of the house without a warrant since the illegal possession of liquor does not constitute a breach of the peace. G. S. 15-39; *STATE v. MOBLEY*, 240 N. C. 476.

CRIMINAL PROCEDURE; SENTENCE AND IMPRISONMENT; BREAKING AND ENTERING; LARCENY

18 June 1956

The maximum imprisonment is ten years for each of the crimes of breaking and entering, larceny, and receiving stolen goods, barring circumstances which would reduce such crimes to misdemeanors.

CRIMINAL PROCEDURE; SENTENCE AND IMPRISONMENT; INVOKING
SUSPENDED SENTENCE; CONCURRENT SENTENCES

18 June 1956

Section 15-6.2 of the General Statutes provides that, "When by a judgment of a court or by operation of law a prison sentence runs concurrently with any other sentence a prisoner shall not be required to serve any additional time in prison solely because the concurrent sentences are for different grades of offenses or that it is required that they be served in different places of confinement."

CRIMINAL PROCEDURE; VENUE

10 August 1954

A case in violation of the motor vehicles laws may be heard in the Superior Court in a county other than that in which it occurred, unless the defendant shall file a plea in abatement, as provided by G. S. 15-134, as it involves only a question of venue.

CRIMINAL PROCEDURE; WARRANTS; AFFIDAVIT; BEFORE WHOM MADE

4 November 1954

Complainant before a justice of the peace must be examined under oath by a justice of the peace. G. S. 15-19 and G. S. 15-20. The affidavit on which the warrant is issued cannot be sworn to before a notary public, and if this is done, it would constitute an irregularity.

CRIMINAL PROCEDURE; WARRANTS; JOHN DOE WARRANTS

1 February 1956

It is improper to issue arrest warrants in blank, leaving it to the arresting officer to fill in the arrested person's name after making the arrest.

CRIMINAL PROCEDURE; PEACE WARRANTS; BREACH OF THE PEACE; JURY TRIAL

3 November 1955

A complainant in a peace warrant or peace bond proceeding under Chapter 15, Article 5, of the General Statutes cannot compel a jury trial.

CRIMINAL PROCEDURE; SUMMONS IN LIEU OF WARRANT

23 March 1956

Conduct of the prosecution at trial rests with the prosecuting attorney and the right of private prosecution to participate is dependent upon the

consent of the prosecuting attorney. Although the statute is silent, when a summons is used in lieu of a warrant in misdemeanor cases, as provided in G. S. 15-20, it is believed that the fees fixed with respect to issuance and service of an ordinary summons would be applicable.

CRIMINAL PROCEDURE; WARRANTS; SUMMONS IN LIEU OF WARRANT

3 April 1956

Although the statute is silent, personal service should be effected when a summons is used in lieu of a warrant in a misdemeanor case, as authorized by the 1955 amendment to Section 15-20 of the General Statutes of North Carolina.

CRIMINAL PROCEDURE; WARRANTS; WAIVER OF SERVICE

21 March 1956

When a person has been arrested for drunken driving and he later appears at court at the proper time and, after the warrant is read to him, enters a plea of not guilty, the fact that the warrant was never formally served on the defendant is immaterial.

DEAD BODIES; AUTOPSIES; PERMISSION TO PERFORM; RETENTION OF ORGANS

29 May 1956

Minor children are incapable of giving consent to an autopsy, at least when there are other adult next of kin.

After the performance of an autopsy, the internal organs must be replaced and a retention of the viscera or any other organ is actionable.

DEAD BODIES; BURIAL; DUTY

10 November 1955

There is no provision in the Statutes of North Carolina by which the burial of unclaimed bodies is provided for, except G. S. 153-160, which provides for the burial of indigent veterans of the World War. At common law, the duty of burying paupers of unclaimed bodies devolved upon the person under whose roof the death occurred. It is therefore submitted that if a hospital has an unclaimed body, it is incumbent upon the hospital to provide a decent burial.

DEBTOR AND CREDITOR; PRIORITY OF PAYMENT UNDER
ASSIGNMENT FOR THE BENEFIT OF CREDITORS

19 May 1955

Under the provisions of 31 U.S.C.A., Section 191, it is thought that the lien of the Federal government for taxes due by a person who has made an assignment for the benefit of creditors takes priority over all debts of the insolvent except the necessary costs of administering the trust. G. S. 23-10; 31 U.S.C.A., Section 191; *LEGGETT v. COLLEGE*, 234 N. C. 595; *BISHOP v. BLACK*, 233 N. C. 333.

DIVORCE; ANNULMENT PROCEDURE; PROSECUTION
BONDS AND ANNULMENT SUITS

25 June 1956

Since the procedure in suits for annulment of marriages is assimilated to that in suits for divorce, no prosecution bond should be required in such suits.

DIVORCE LAWS; DEPRIVATION OF EMPLOYMENT

15 September 1954

There is no law in this State that would deprive a person of his employment by reason of such person having obtained a divorce.

DIVORCE; HUSBAND AND WIFE; QUALIFIED DIVORCE; RECONCILIATION

20 May 1955

A qualified divorce does not terminate the marriage relation. If the parties become reconciled, they may resume their life together without remarriage. Such resumption of the marriage relation destroys the effect of the qualified divorce decree.

DIVORCE LAWS; PRISONER

12 April 1955

A person whose spouse has been committed to State's Prison may obtain a divorce under the laws of this State provided the parties have lived separate and apart for a period of two years.

DIVORCE; SERVICEMEN

7 December 1954

Where a resident of this State enters the armed forces of the United States, is sent under military orders to a post or station outside the State, intends to remain there only so long as he is under military orders to do so, considers North Carolina as his permanent residence and intends to return to this State upon the completion of his military service, such person would not have lost his legal residence in this State for the purpose of instituting divorce proceedings.

DOG WARDENS; AUTHORITY TO MAKE ARRESTS

21 September 1955

County dog wardens have authority to make arrests for violations of all public and public-local laws pertaining to the ownership and control of dogs. The statutes do not exempt from the rabies vaccination laws dogs which are kept in confinement. A rabies vaccination of a dog may be performed only by a licensed veterinarian or a rabies inspector. No layman other than a duly appointed rabies inspector may perform rabies vaccinations in the administration of the rabies vaccination laws.

DOGS; RABIES INSPECTORS; RESPONSIBILITY OF RABIES INSPECTOR

16 January 1956

A rabies inspector, who is appointed by the county health officer with the approval of the board of county commissioners, could be removed by the appointing authorities.

DOGS; RABIES LAW

14 October 1954

Under G. S. 106-376 stray dogs in a quarantine district, after reasonable efforts to apprehend same, running at large, may be killed and their bodies disposed of by any peace officer, and under G. S. 67-32, where a dog warden is established, lost and stray dogs may be impounded for 15 days, and after effort is made to locate the owners, if none can be found or if a new owner will not accept such dog, such dog may be disposed of in a humane manner.

DOGS; SEEING-EYE DOGS

7 July 1955

A blind person is entitled to take his seeing-eye dog with him into a public conveyance or any place of public accommodation when such person

would be entitled to enter without such dog. Such person when otherwise entitled to be a guest at a hotel may take such dog with him into the hotel room.

DOGS; STRAY DOGS; IMPOUNDING; DESTRUCTION

2 March 1956

The impounding or destroying of stray dogs is covered in a series of statutes contained in Chapter 67 of the General Statutes and Section 106-377 of the General Statutes.

DRAINAGE DISTRICT; DISPOSITION OF SURPLUS FUNDS

18 October 1954

Surplus funds in a drainage district which cannot be used for district purposes may be deposited in federally insured building and loan associations pending use of the funds.

EDUCATIONAL ADVANTAGES; VETERANS' CHILDREN

14 November 1955

An eligible child, within the meaning of Article 15 of Chapter 116 of the General Statutes, is defined as a child of a veteran who was a legal resident of North Carolina at the time of said veteran's entrance into the armed services. A Class II eligible child is one whose father, at the time the benefits are sought to be availed of, is suffering from a service-connected disability of 30% or more as rated by the United States Veterans Administration.

ELECTIONS; ABC STORES; CLOSING ON ELECTION DAY

9 August 1955

The statute requiring that ABC stores in a county be closed on election days does not require closing where the election is confined to a certain area and the store in question is outside of that area.

ELECTION LAWS; AFFIDAVIT OF ABSENT VOTER

22 October 1954

The affidavit prescribed by G. S. 163-57 may not be sworn to by the voter who is the person taking the acknowledgment of the same. This is true even though such voter is a commissioned officer in the armed services.

ELECTIONS AND ELECTION LAWS; ABSENTEE BALLOTS; WITHDRAWAL

11 October 1954

Chapter 159 of the Public Laws of 1939 repealed all prior laws relating to absentee voting, including all local Acts or private or public-local Acts. All absentee ballots are now administered under the general law of the State, and prior to the delivery of the list and ballots to the precinct registrar a voter who has applied for, received, marked and returned to the chairman an absentee ballot can withdraw his ballot and vote in person; after the ballots have been delivered to the precinct officials they cannot be withdrawn.

ELECTION LAWS; ESTABLISHMENT OF LOCAL ADMINISTRATIVE
AND JURISDICTIONAL UNITS

24 February 1956

In counties where local administrative and jurisdictional units have been established, candidates may file and pay their filing fees to the head of such local administrative and jurisdictional unit.

ELECTION LAWS; ELIGIBILITY FOR APPOINTMENT AS
CHAIRMAN OF COUNTY BOARD OF ELECTIONS

17 November 1954

A justice of the peace who holds his office by virtue of an appointment by the Governor or by appointment to fill a vacancy is eligible to serve as a member or as chairman of a county board of elections.

ELECTION LAWS; ELIGIBILITY FOR APPOINTMENT AS
CHAIRMAN OF COUNTY BOARD OF ELECTIONS ..

15 November 1954

A justice of the peace, being an elective officer, is not eligible to serve as chairman of a county board of elections. See G. S. 163-11.

ELECTIONS; AUTHORITY OF CHAIRMAN OF COUNTY BOARD TO
ADMINISTER OATHS TO ABSENTEE VOTERS

9 May 1956

It is thought that, under the provisions of G. S. 163-58, the Chairman of a County Board of Elections does not have authority to take the affidavits of absentee voters. Instead, such voter must subscribe to his affidavit in the

presence of a notary public, a clerk of the superior court or some other official having a seal, subject to the proviso applicable to members of the armed services set out at the end of the Section in question.

ELECTIONS; AUTOMATIC VOTING MACHINES; AUTHORITY OF COUNTY
COMMISSIONERS TO PURCHASE VOTING MACHINES
WITHOUT A VOTE OF THE PEOPLE

29 March 1956

Under G. S. 163-187.1, a board of county commissioners may purchase voting machines without submitting the question to a vote of the people. Under G. S. 163-187.2, the commissioners may, if they so desire, submit the question of the purchase of such machines to a vote of the people.

ELECTIONS; COUNTING OF BALLOTS

14 May 1956

It is thought that G. S. 163-175(6) does not apply to the nomination for election of county commissioners by districts since the office of commissioner for each district is a separate office.

ELECTIONS; COUNTY BOARDS; CLERICAL ASSISTANTS

14 February 1956

Construing together G. S. 163-14(4) and G. S. 163-14(15) it is thought that it is the duty of every county board of elections to prepare and submit to the Board of County Commissioners a budget estimating the cost of elections for the ensuing fiscal year; and that the Board of Elections has the authority to appoint its clerical assistants and to fix their compensation provided the same is within the limits of the appropriation made for that purpose by the Board of County Commissioners.

ELECTIONS; MUNICIPAL ELECTIONS; DETERMINATION OF RESULTS

1 March 1955

Elections for boards of commissioners in municipalities in which they are elected by wards are determined by the highest number of votes cast for each candidate in each ward. In case of tie, the result is determined by lot. G. S. 160-50.

ELECTIONS; DISTRIBUTION OF ANONYMOUS CIRCULARS

31 May 1956

The distribution of anonymous circulars which are not false, not derogatory and which contain no charge calculated to affect a candidate's chance of nomination does not constitute a crime in violation of 163-196.

ELECTIONS; DOUBLE OFFICE HOLDING

13 June 1956

A member of a Soil Conservation Committee holds a public office and, hence, is not able to serve as registrar or judge of election, under the provisions of G. S. 163-15.

ELECTIONS; EXTENSION OF CORPORATE LIMITS

30 December, 1954

The last sentence of G. S. 160-447, which provides that the County Board of Elections shall proceed to hold an election on the question of annexation of territory to a municipality means that the Board of Elections shall, within sixty days after receiving the order from the municipality, proceed with the making of arrangements for holding the election. This provision does not mean that the actual election should be held within sixty days after the receipt of an order.

ELECTIONS; ELIGIBILITY; EXTENDING CORPORATE LIMITS

14 October 1954

Both Article VI, Section 2, of the North Carolina Constitution and G. S. 163-25 provides that in order to be eligible to vote in an election, a person must reside in the State for one year and in the precinct, ward or other election district in which he offers to vote four months next preceding the election. They also provide that one who removes from one election district to another in the same county may vote in the election district from which he has removed until four months after such removal.

G. S. 160-446 provides that upon a petition duly filed and signed by 15% of the qualified voters residing in the area proposed to be annexed, the governing body of the municipality to which it is to be annexed shall submit the question to the qualified voters of the area proposed to be annexed, and may submit the question to the residents of the municipality, the residents of the two areas to vote separately.

ELECTIONS; PRIMARIES; CANDIDATES; FILLING OF VACANCIES;
PARTY AFFILIATION REQUIRED

21 July 1954

A person whose party affiliation is not shown on the registration book or whose party affiliation is designated as "Independent" would have a right to file as a candidate for the Republican or Democratic nomination, as the statute, G. S. 163-119, prohibits only a person from being a candidate of a party when he is registered as a member of some other party. G. S. 163-123 would not be controlling in such cases.

ELECTION LAWS; INDEPENDENT CANDIDATES; BALLOTS

20 April 1955

Under the provisions of G. S. 163-152, it is thought that a person may not file as an independent candidate for a municipal office after the time prescribed by law for the nomination of candidates by political parties has expired.

ELECTIONS; APPOINTMENT OF MARKERS

4 October 1954

Markers should be selected to fairly represent the political parties participating in an election. If both parties have full tickets, the allocation based upon the number of voters registered as affiliated with each party would seem to be fair. If one of the parties should not have a full ticket, this might be taken into consideration in allotting them markers.

ELECTIONS; MEMBERS OF COUNTY BOARD OF EDUCATION
NOMINATION AND APPOINTMENT

30 March 1956

Construing together G. S. 115-18, G. S. 115-19 and G. S. 163-155(c), it is thought that the names of candidates for the county board of education should not be printed on the official county ballot in the general election.

ELECTIONS; MUNICIPAL; NEW PLAN OF CITY GOVERNMENT

27 September 1954

An election on the question of the adoption of a new plan of city government is conducted by the county board of elections and must be held not later than forty days from the receipt of the petition on a date to be fixed

by the board. There is no legal objection to holding the special election on the day of the general election. However, there might be some confusion arising for the reason that the county board of elections would be required to conduct two separate elections on the same day.

ELECTIONS; PETITIONS FOR ABC ELECTIONS

28 May 1956

A signer of a petition requesting an election on the question of the legal sale of wine and beer may withdraw his name from the petition at any time before formal action is taken thereon.

Beer and wine dealers who offer money to signers of a petition in an effort to get them to request removal of their names from the petition are not guilty of bribery. See *STATE v. GREER*, 238 N. C. 325.

An election board is entirely within its authority in permitting copies of beer and wine petition to be made.

ELECTIONS; APPOINTMENT OF PRECINCT OFFICIALS WHEN ONLY ONE PARTY PARTICIPATES

6 April 1956

G. S. 163-15 provides that, when only one political party participates in a primary, all of the precinct officials selected for holding such primary shall be chosen from such political party.

ELECTIONS; PRIMARIES; PAYMENT OF EXPENSE BY CANDIDATES

13 June 1956

The duty is imposed on government (state or county) to defray the expense of primary elections. G. S. 163-122 and -135. A contract by which a candidate agrees to defray that expense is contrary to public policy and, hence, is void.

ELECTIONS; PROTEST OF CANDIDATE; COUNTY BOARD

2 July 1954

G. S. 163-143 provides that when on account of errors in tabulating returns or filling out blanks, the result of an election in one or more precincts cannot be accurately known, the County Board of Elections and the State Board of Elections shall be allowed access to the ballot boxes in such precincts to make a recount and declare the results which shall be done under such rules as the State Board of Elections shall establish. The State Board of Elections has established such rules which provide that the pro-

testant must file within two days after the completion of the original count a written protest supported by affidavits showing the alleged irregularities.

It is thought that the County Board of Elections of its own motion does not have the authority to order a recount. Instead, the Board of Elections may act only upon a proper written protest supported by affidavits.

G. S. 163-15 provides that registrars and judges before entering upon their duties shall have the oath of office administered to them by some officer authorized to administer oaths. G. S. 163-164 provides that in general elections each judge of the election and registrar shall, before the opening of the polls, take a special oath to conduct that particular election fairly (the form of the oath is set out in the statute).

It is doubtful that this special oath is required in primaries.

ELECTION LAWS; QUALIFICATION OF ELECTION OFFICIALS

8 September 1954

The office of city clerk is a public office within the meaning of G. S. 163-15 which prohibits a public officer from serving as an election official.

ELECTIONS; QUALIFICATIONS OF MUNICIPAL JUDGE

18 April 1955

A candidate for office must be a qualified voter in the area of the office and, therefore, a non-resident of a municipality cannot be a candidate for recorder although the court has jurisdiction over the territory in which such person resides.

ELECTIONS; MUNICIPAL; QUALIFICATIONS OF VOTERS ANNEXATION OF NEW AREA

21 July 1954

Persons living in an area proposed to be annexed to a municipality must have resided in such area for the length of time required by the Constitution as to eligibility to vote.

ELECTIONS; REGISTRATION

6 April 1955

The qualifications of persons for voting having been once passed on by a proper election official may not be re-examined by a subsequent registration official.

Persons duly registered on municipal registration books for a bond election are entitled to vote in a municipal election which follows.

ELECTION LAWS; RELIGIOUS HOLIDAYS

8 September 1955

Persons who can't go to the polls on election day because it falls on a religious holiday are not permitted to vote absentee ballots in this State.

ELECTIONS; MUNICIPAL; RESIDENCE REQUIREMENTS

18 April 1955

A person who moves out of a town temporarily, with the intention of returning, and does return prior to a town election, is entitled to register, vote and hold office therein.

ELECTIONS; RIGHT OF NATIONAL GUARDSMAN TO VOTE

11 June 1956

The National Guard, when on active duty with the United States, such as training or other services for the Federal Government, constitutes a part of the armed forces of the United States and, hence, members of the National Guard, when in training, may vote in primaries, if otherwise qualified.

ELECTIONS; SECOND PRIMARIES

4 June 1956

G. S. 163-140 provides that, "If in the case of an office no aspirant shall receive a majority of the votes cast, a second primary, subject to the conditions hereinafter set out, shall be held in which only the two aspirants who shall have received the highest and next highest number of votes shall be voted for."

This section also provides that if either of such two shall withdraw and decline to run and shall file notice to that effect with the Board of Elections, such Board shall declare the other aspirant nominated. From the foregoing, it is thought that the candidate receiving the highest number of votes, but not a majority, is not authorized to withdraw and allow the candidates receiving the second and third highest number of votes, to be voted for in a second primary.

ELECTIONS; MUNICIPAL; SERIALLY NUMBERING BALLOTS

27 April 1955

Under the Australian Ballot Law, ballots cannot be consecutively or serially numbered.

ELECTIONS; NAMES OF CANDIDATES ON BALLOTS; USE OF INITIALS

14 September 1954

In having his name printed on the official ballot for the general election a candidate may use his initials as part of his name.

ELECTIONS; VOTING MACHINES; PERMISSION TO VOTE; EFFECT

10 September 1954

If a county board of commissioners elects to call an election on the purchase and use of voting machines, favorable vote would probably make it mandatory on the part of the commissioners that the voting machines be purchased and used, although the statute uses the word "may" rather than "shall."

ELECTIONS; PURCHASE OF VOTING MACHINES; VOTE OF THE PEOPLE

19 April 1955

Municipalities may purchase and use not exceeding five experimental voting machines without a vote of the people, unless the authority to do so is prohibited by G. S. 163-187.5. Whether or not this section has this effect cannot be determined by this office.

ELECTIONS; WRITE-IN VOTES

10 January 1955

G. S. 163-152 points out a method by which the names of independent candidates may be placed upon the official ballot, upon petition. G. S. 163-155(d) provides for a township ballot. G. S. 163-175(3) provides for write-in votes upon an official ballot and stipulates that when a name is written in on the official ballot in the manner stipulated by statute, the new name so written in is to be treated like any other name on the ballot.

ELECTRICAL CONTRACTORS; EXEMPTIONS FROM LICENSE REQUIREMENTS

25 April 1955

Article 4 of Chapter 87 of the General Statutes, relating to Electrical Contractors, does not apply to the installation, construction, maintenance or repair of electrical wiring, devices, etc., by persons, firms or corporations, upon their own property, who regularly employ one or more electricians or mechanics for such purpose, where such devices, appliances, etc., are used for the conducting of the business of such persons, firms or corporations.

EXTRADITION; AGENT OR FUGITIVE OFFICER; EXTRADITION EXPENSES

10 November 1955

The expenses of going after and returning a fugitive to this State, pursuant to the extradition statutes, are borne by the State in the case of a felony and by the county in the case of a misdemeanor.

EXTRADITION; GARNISHMENT PROCEEDINGS AGAINST STATE EMPLOYEES

3 January 1955

A person may not be extradited from this State to another for failure to meet alimony payments. A person may be extradited for failure to provide support for his minor children.

EXTRADITION PROCEEDINGS; PROSECUTING ATTORNEY;
AUTHORITY AND DUTY TO INSTITUTE

8 February 1956

When it is desired to institute extradition proceedings against a person outside this state, it is the duty of the prosecuting attorney of the court in which the criminal action is pending to institute extradition proceedings.

FAIR TRADE ACT; CRIMINAL PROSECUTION

13 October 1954

The Fair Trade Act does not subject the violator to criminal prosecution but only action for damages by a manufacturer or distributor aggrieved thereby.

FAIRS; ASSOCIATION; DISSOLUTION

18 April 1956

A county fair association organized prior to April 1, 1949, under Section 4941 of the Consolidated Statutes may be dissolved under the provisions of Chapter 55 of the General Statutes. Whenever the number of members becomes less than ten, the association ceases its corporate existence.

FAIRS; AGRICULTURAL; STATUTORY PROVISIONS

28 November 1955

Under the general law a carnival may not be held within 30 days prior to the date of a regularly advertised agricultural fair in the same county.

FIRE DEPARTMENT; BUILDING INSPECTIONS; STATE-OWNED BUILDINGS

9 March 1956

A building inspection fee fixed by a municipality with respect to a newly constructed building does not apply in the case of a State-owned building unless the agency owning the building requests the inspection.

FIRE DEPARTMENT; BUILDING INSPECTIONS; STATE-OWNED BUILDINGS

16 March 1956

There is no statutory objection to periodic routine inspection of State-owned buildings for the purposes of making recommendations relating to fire prevention. Such inspections are not subject to the payment of any fees.

FIRE PROTECTION; DUTIES OF FIRE DEPARTMENT

13 October 1954

In the exercise of the duty of fighting fires, members of a fire department have the implied authority to direct traffic in the vicinity of the fire and to order sight-seers and other persons out of a burning building or its vicinity.

It is seriously doubted if the members of a fire department could arrest any person for the violation of the traffic laws or other laws. It would appear that this authority is vested in the police of the municipality.

GASOLINE INSPECTION; UNDERGROUND STORAGE TANKS; COLOR OF FILL CAPS

31 January 1955

A dealer or distributor of Gasoline is required to paint the fill caps on underground storage tanks so as to designate the product to be put in such tank. The regular State-approved color scheme is red for premium and yellow for regular gasoline. If a dealer, distributor, or company has established a different color scheme, this may be registered with the Gasoline and Oil Inspection Division of the Department of Agriculture and may thereafter be used.

GUARDIAN AND WARD; ACTION ON BOND

19 April 1956

It is thought that G. S. 33-14 gives the consent of the State for an action to be brought in its name upon the relation of a successor guardian against

an original guardian and the surety on his official bond. Carmichael v. Moore, 88 N. C. 29; Norman v. Walker, 101 N. C. 24; Wilson v. Pearson, 102 N. C. 290; Grant v. Rogers, 94 N. C. 755.

GUARDIAN AND WARD; ANCILLARY GUARDIANSHIP;
AUTHENTICATION OF RECORDS

26 March 1956

Before real estate belonging to a non-resident incompetent person is sold, said non-resident incompetent having a duly appointed and acting guardian appointed by a sister state, an ancillary guardian should be appointed in this State.

GUARDIAN AND WARD; APPOINTMENT OF NON-RESIDENT GUARDIAN

1 June 1955

An orphanage in which a child is placed has the authority of guardian of the person of such child by virtue of the provisions of G. S. 110-45. The statute does not give such institution any authority to administer the estate of the child. G. S. 33-9 makes it the duty of the Clerk of Superior Court to remove guardians and appoint successors where the guardian is legally disqualified to act as a person would be to be appointed administrator and G. S. 28-8 enumerating disqualifications of administrators states that the Clerk shall not issue letters of administration to any person who at the time of appearing to qualify is a non-resident of this State. These two statutes when read together would seem to preclude the Clerk from appointing a non-resident individual as guardian of a child who resides in this State.

GUARDIAN AND WARD; ATTORNEY'S FEE; CIVIL PROCEDURE; NON-SUIT
AFTER JUDGMENT

22 August 1955

When a guardian ad litem is appointed to represent an incompetent in a condemnation proceeding, the court may fix a fee for the attorney for the guardian.

GUARDIAN AND WARD; AUTHORITY OF GUARDIAN TO
RENT WARD'S PROPERTY

9 September 1954

G. S. 33-21 and G. S. 33-22 point out the procedure to be followed by a guardian in renting or leasing the real property of his ward.

HEALTH; WORKMEN'S COMPENSATION ACT; EMPLOYEES

6 April 1956

It is thought that employees of a county health department are covered by the Workmen's Compensation Act even though some of the funds of the Department are derived from the State and Federal Governments. G. S. 97-2(c); G. S. 97-7; CHAMPION v. BOARD OF HEALTH, 221 N. C. 96.

HEALTH; MILK REGULATIONS

3 November 1955

Under the provisions of G. S. 130-166, Subsection 4, a district board of health is authorized to adopt a regulation devoted exclusively to providing for an inspection and sampling service to insure that milk dispensed through bulk milk dispensers meets proper standards from a health standpoint.

HEALTH; RABIES LAW

4 August 1954

It is the duty of the owner of a dog to present the same for vaccination after proper notice in the paper, but a person who is not the owner of a dog is not required by law to have such dog vaccinated even though the dog stays at his house.

HEALTH; SANITARY DISTRICTS

27 October 1954

A Sanitary District does not have authority to compel persons living inside a District to buy water exclusively from the water system of the District, nor can it compel persons buying water from private individuals to discontinue this practice, and this is true whether the water is bought or is given away free. A Sanitary District is not required to procure a Certificate of Public Convenience and Necessity or franchise from the Utilities Commission in order to be the sole furnisher of water in the District, as the statute confers this authority directly.

HEALTH; SURGICAL OPERATIONS ON INMATES

23 September 1954

Under G. S. 230-243.1 the local health officer, medical superintendent or director of a State institution and the surgical consultant constitute a board

to pass upon the urgency of an operation and to authorize same without permission from a reliable member of the family of an inmate, patient or prisoner. This contemplates that all of these members shall act as a board and give their unanimous consent and that the members of this board consult together in person. The local health officer may or may not see the emergency case according to his discretion, but his mere signature to a record sent him by the physician in charge of the institution would not be sufficient.

A local health officer signing affidavits as to the condition of an alleged incompetent should make a personal examination of the alleged incompetent, and this cannot be replaced by a mere consultation over the telephone with the other examining physician.

HEALTH; TUBERCULOSIS; CONFINEMENT

24 April 1956

Hospital confinement of a patient can be required when such person has an active case of tuberculosis.

HIGHWAY PATROLS; ARREST FEES

4 October 1955

An arrest fee taxed in the bill of costs on account of an arrest by a member of the State Highway Patrol should be paid into the general fund of the county in which the cost is taxed, not into the municipal treasury even though the case in which such cost is taxed is tried in a municipal recorder's court. G. S. 20-193.

HOSPITAL; BOND ISSUE; DISTRICTS

15 March 1955

By compliance with Article 13C of Chapter 131 of the General Statutes, hospital districts may be created within a county and be authorized to issue bonds upon majority vote of the people within this district.

HOSPITALS; COUNTY HOSPITAL AUTHORITY

13 February 1956

In the absence of any specific statutory prohibition, an *ex officio* member of a hospital authority board would have the same voting rights as any other member of the board.

HOSPITALS; LIABILITY OF CHARITABLE NON-PROFIT HOSPITALS

5 July 1955

A non-profit, charitable hospital can be liable for injuries to employees arising out of and in the course of their employment; ordinarily and assuming no negligence in the selection of doctors, nurses and other employees, a non-profit, charitable hospital is not liable to patients for injuries caused by the negligence of some employee in their treatment; ordinarily a charitable, non-profit hospital is not liable to visitors or other persons on the premises for injuries received while on the premises. While there are cases involving corrupt action or other malicious and unlawful conduct under which an administrator and a governing body could be held liable, ordinarily the administrator and governing body would not be held to be personally liable for any of the torts and negligence involved in the operation of a charitable, non-profit hospital.

HOSPITALS; COUNTY HOSPITALS; SPECIAL LEVIES

9 September 1955

When a special tax levy is approved by a vote of the people for the maintenance of a county hospital, and such hospital is subsequently enlarged by the acquisition of additional facilities whether at the same location or at some other place in the county, the proceeds of such special tax levy may properly be used for the maintenance of all facilities constituting the enlarged county hospital.

HOSPITALS; RADIOLOGIC EQUIPMENT; PURCHASE; SPECIFICATIONS

18 June 1956

In advertising for radiologic equipment to be purchased by a governmental hospital, the specifications should be drawn with such accuracy and such detail as to describe precisely the equipment to be purchased, but should not be so, arbitrarily, as to differentiate between substantially identical items of equipment on some arbitrary or unrealistic basis. When bids are opened, the statute provides that "the award shall be made to the lowest responsible bidder, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract."

HOTELS; LAWS RELATING TO HOTELS; POSTING

9 January 1956

Hotels are required by statute to post in each room a copy of Article 1 of Chapter 72 of the General Statutes relating to inns and hotels and also a copy of all regulations relating to the conduct of guests.

INFANTS; CHANGE OF NAME; G. S. 101-2, MINOR CHILD OF DIVORCED
PARENTS IN CUSTODY OF MOTHER

21 April 1955

The name of a minor child under the age of sixteen years of divorced parents may not be changed by proceeding under G. S. 101-2 without the consent of both parents, if living. See G. S. 101-2.

INSANE; ADMISSION OF PATIENTS

14 October 1954

The action of the Clerk of the Superior Court in having an alleged incompetent brought before him is usually initiated by the affidavit of a reliable person, but the statute also says that the Clerk can act upon other valid information. This affidavit authorizes the Clerk to issue a warrant or order to have the alleged incompetent brought before him for an examination by two physicians; both prior to examination and after examination an alleged incompetent may be committed to jail if he is dangerous to the community or is apt to do harm to himself; if the physicians disagree as to the mental condition of the alleged incompetent, the physicians have no standing to appeal to the Superior Court on the question, but there is no reason or law that prohibits the Clerk from having the alleged incompetent examined by other physicians.

INSANE; COMMITMENT BY CLERK OF SUPERIOR COURT

16 March 1955

An order of commitment of an alleged mentally disordered person to a State hospital may be ordered by the clerk of the superior court in the county where the alleged mentally disordered person is or resides.

INSANE; FEEBLE-MINDED

31 December 1954

Under regulations adopted by the Hospitals Board of Control adult feeble-minded persons can be admitted to the Caswell Training School.

INSANE; JUVENILE COURTS; MENTAL DEFECTIVES

26 April 1955

The juvenile court has authority to commit a feeble-minded child within its jurisdiction to a State Training School for feeble-minded children, pursuant to the provisions of G. S. 110-38.

INSANE; PATIENT'S APPLICATION FOR COMMITMENT

23 December 1954

A county is not liable for the expense of committing an indigent mental patient to a State hospital when such patient voluntarily commits himself under G. S. 122-62.

INSANE; PROCEDURE FOR RESTORATION OF SANITY

13 June 1956

Because of the reasoning in *In Re Tate* 239 N. C. 94 and in *In Re Harris* 241 N. C. 179 it is thought that a person committed to a State Mental Institution under the provisions of Article 3, Chapter 122 of the General Statutes and who has been released on probation may not invoke the provisions of G. S. 35-4 for restoration of sanity. Instead the remedy is by habeas corpus.

INSANE; RIGHT OF DETENTION

1 December 1955

When a mentally ill person has been properly committed to a private hospital or mental institution pursuant to either Section 122-65 or Section 122-79 of the General Statutes, such hospital or institution has authority to take appropriate steps and use reasonable methods and procedures to insure detention of such person.

INSANE; TRANSFER OF MENTALLY DISORDERED PRISONERS

21 April 1955

A prisoner should not be transferred to a mental institution until there is an Order of Commitment by the clerk of the superior court where the prisoner is or resides.

INSANE; STATE HOSPITAL; TRANSFER OF PATIENT TO PRIVATE INSTITUTION

30 January 1956

Section 122-80 of the General Statutes authorizes the executive committee of a state hospital to transfer a patient therein to a licensed private hospital when it deems it desirable.

INSURANCE LAWS; AGENTS SPLITTING COMMISSIONS

28 October 1954

Under the provisions of G. S. 58-44.1, two insurance agents, both licensed to write accident and health insurance, but licensed with different companies, may pay portions of their respective commissions to each other.

INSURANCE OF GOVERNMENTAL BANK DEPOSITS

31 August 1955

Governmental deposits in an insured bank are insured by the Federal Deposit Insurance Corporation to the extent of \$10,000 for each deposit made in each custodial capacity by an officer, employee, or agent of the State, county, city, or governmental agency. 12 U. S. C. 1813(m).

INSURANCE; FIRE INSURANCE; STATE INSTITUTION BUILDINGS;
SELF-INSURANCE

17 November 1955

A building owned by the North Carolina State College at Raleigh would continue to be covered by the State Property Fire Insurance Fund, pursuant to Article 21 of Chapter 58 of the General Statutes, even though such building is leased by the College to the Alumni Association.

INTOXICATING BEVERAGES; ABC ELECTIONS

22 October 1954

In a county ABC election called under G. S. 18-61, it is thought that in passing upon a petition presented to it, the county board of elections is

not required to find as a fact that each person who signed the petition actually voted in the last election for Governor. Instead, it is the function of the board to find that the petition was actually signed by registered voters of the county equivalent to the number of 15% of the number of votes cast in the last election for Governor. *WEAVER v. MORGAN*, 232 N. C. 642.

INTOXICATING BEVERAGES; ABC OFFICER; AUTHORITY TO ARREST

14 September 1954

Where an ABC officer has a search warrant, which also contains an order of arrest of any person therein named found on the premises, and pursuant to such search warrant searches the house and finds illegal liquor, he can arrest the person under such warrant. An ABC officer has the right to exercise the power and authority of other peace officers in the suppression of illegal liquor, and he can, therefore, arrest all persons found at an illegal distillery operating same or aiding and abetting in such operation without a warrant, as provided by G. S. 18-23.

INTOXICATING BEVERAGES; CONFISCATION OF VEHICLES; AUTHORITY OF COUNTY TO PAY EXPENSES WHERE AMOUNT OF BID IS NOT SUFFICIENT

9 August 1954

Where a vehicle is seized and sold because of the unlawful transportation of intoxicating liquor and the amount bid at the sale is not sufficient to pay the expenses of the sale, the county is authorized to pay the balance of the expenses from the general fund of the county.

INTOXICATING BEVERAGES; DISPOSAL OF CONFISCATED BEVERAGES

17 January 1955

G. S. 18-6 provides that any confiscated tax-paid liquor seized by officers shall within ten days be turned over to the Board of County Commissioners, which shall within ninety days from the receipt thereof turn it over to hospitals for medicinal purposes, or sell it to legalized alcoholic beverage control stores within the State of North Carolina, the proceeds of such sale being placed in the School Fund of the county in which such seizure was made, or destroy it.

INTOXICATING BEVERAGES; CONFISCATION OF VEHICLES;
RIGHTS OF INNOCENT LIEN HOLDERS

17 September 1954

It is thought that an unrecorded mortgage is such a lien as is protected by the provisions of G. S. 18-6 when it has been determined that the mortgagee is an innocent lien holder. When the mortgage has been executed outside of North Carolina, the provisions of G. S. 44-38.1 will be applicable. *MOTOR COMPANY v. JACKSON*, 184 N. C. 329 and *SKINNER v. THOMAS*, 171 N. C. at page 98.

INTOXICATING BEVERAGES; FRATERNITY HOUSES

14 September 1954

Under the ABC Act, intoxicating liquors may not knowingly be sold to minors. Possession, distribution and sale of intoxicating liquors by clubs is prohibited by law, which may be applicable to fraternity houses at colleges. In dry counties, transportation and possession of intoxicating liquor must be in strict accordance with the provisions of the statute, the Turlington Act otherwise being applicable.

INTOXICATING BEVERAGES; ILLEGAL SALE

7 May 1956

Possession in North Carolina by any person, other than a proper governmental official, of a federal license to sell liquor is a misdemeanor.

INTOXICATING BEVERAGES; OUT OF STATE LIQUOR

18 June 1956

A person may bring into North Carolina liquor legally purchased outside the State providing that the liquor is for his own personal use, that he does not bring into the State more than one gallon of such liquor and that the cap or seal on the container or containers is not opened or broken. Such liquor may be brought into the State without payment to North Carolina of liquor taxes.

INTOXICATING BEVERAGES; POSSESSION OF BEER IN DRY COUNTY

26 July 1955

Possession of taxpaid whiskey is permissible when purchased at a licensed ABC store in a quantity not in excess of one gallon and trans-

ported immediately to the home in a dry county. The possession of more than one gallon of whiskey, even in the home, is prima facie evidence of unlawful possession for the purpose of sale and various illegal offenses as set forth in the Turlington Act. In a dry county liquor cannot be possessed in a licensed place of business as the home and family purpose doctrine is the only source of immunity or exception.

If the licensed sale of beer has been voted out by a referendum a person could possess in a licensed place of business not more than five gallons of beer, but if the person possesses more than five gallons there is a statutory presumption that it is possessed for the purpose of sale, and this would be illegal.

INTOXICATING BEVERAGES; POSSESSION FOR PURPOSE OF SALE

20 May 1955

A person living in territory in which ABC Stores are not operated may lawfully transport to and keep in his private dwelling, for his own use, not more than one gallon of tax-paid liquor, and such possession raises no presumption against him.

A person may not purchase liquor in this State except from a legally established liquor store.

JAILS; RESPONSIBILITY OF COUNTIES FOR PRISONERS

19 March 1956

The Supreme Court of this State, in the case of BOARD OF EDUCATION v. HENDERSON, 126 N. C. 689, held that there is no liability on the part of a municipality to provide room and board and other costs in connection with the upkeep of prisoners. The Court held in this case that this is a liability of the county.

JURIES; EXEMPTIONS VOLUNTEER FIREMEN

12 October 1955

A member of a volunteer fire department may be exempted from jury duty upon proper certification to the clerk of the superior court in the manner prescribed by Section 9-19 of the General Statutes.

JURORS; RECORDER'S COURT; JURY LIST FOR MUNICIPAL RECORDER'S COURT

9 March 1956

In criminal trials in municipal Recorder's Courts, apparently the jury procedure is governed by the provisions of G. S. 7-204, which in essence

says that the recorder shall follow the same procedures as are provided in actions before justices of the peace. Therefore, the provision in G. S. 7-153, applicable to justices of the peace, to the effect that the clerk of the county Board of Commissioners is to furnish a list of jurors for the township would seem to apply to a municipal Recorder's Court.

On the other hand, as to civil actions in a Recorder's Court, apparently the jury procedure is governed by G. S. 7-250, which directs the recorder to "proceed to the office of the Register of Deeds of the county and cause to be drawn a jury of 18, observing as nearly as may be the rule for drawing a jury for the Superior Court."

JURORS; REMOVING NON-RESIDENTS' NAMES

31 December 1954

It is the duty of the Board of Commissioners when taking the names of jurors from the tax list to exclude the names of non-residents.

JUSTICES OF THE PEACE; CRIMINAL JURISDICTION; STATUTORY LIMITATIONS ON EXCLUSIVE JURISDICTION

2 March 1956

A justice of the peace may, by statute, be deprived of criminal jurisdiction to try cases within a particular city or town and exclusive jurisdiction conferred upon some other inferior court.

JUSTICE OF THE PEACE; ELECTION; FILING FEE FOR PRIMARY ELECTION

30 March 1956

A candidate for the office of the justice of the peace is required to pay a filing fee equal to 1% of the salary or fees which he received the previous year as justice of the peace, but in any event, the minimum fee is \$5.00.

KENAN PROFESSORSHIPS

11 October 1954

Under resolution adopted by the Board of Trustees of the University of North Carolina, under date of January 27, 1920, Kenan professorships can be awarded on one year basis for professors on leaves of absence but cannot be repeated to the same professor more than once in five years, such temporary professorships to be known as Kenan professorships, as required by the terms of Mrs. Bingham's will.

LABOR; DEDUCTIONS FROM WAGES

12 June 1956

The North Carolina law does not contain any prohibition against a voluntary payroll deduction plan for a uniform rental service. The Fair Labor Standards Act does contain certain prohibitions under particular circumstances.

LANDLORD AND TENANT; SUMMARY EJECTMENT

15 September 1955

Civil process may be served upon a person who is in prison on a criminal charge. HARE v. HARE, 228 N. C. 740, and WHITE v. UNDERWOOD, 125 N. C. 25.

LAW ENFORCEMENT OFFICERS' BENEFIT AND RETIREMENT FUND; COSTS,
\$2.00 ADDITIONAL COST REQUIRED TO BE COLLECTED BY
JUSTICES OF THE PEACE

31 August 1954

Justices of the peace are required to collect additional costs in the amount of \$2.00 for Law Enforcement Officers' Benefit and Retirement Fund in all cases coming before courts of justices of the peace.

LAW ENFORCEMENT OFFICERS' BENEFIT FUND; COMPENSATION
AND FORM OF SUBSISTENCE

5 January 1955

Where a city allows a subsistence allowance of \$5.00 per day to a police officer, this allowance will be treated as compensation pay to the police officer for purposes of the Law Enforcement Officers' Benefit Fund.

LAW ENFORCEMENT OFFICERS' RELIEF FUND; COVERAGE

4 November 1955

Under the provisions of Section 2 of Chapter 1041 of the Session Laws of 1949, providing for a Halifax County Law Enforcement Officers Relief Fund, a woman deputy sheriff who performs office duties and the matron of the county jail are covered by the Act.

LAWYERS; PRACTICE OF LAW; PREPARATION OF DEED BY ONE
NOT A MEMBER OF THE STATE BAR

8 March 1956

It is unlawful, under G. S. 84-4, for a licensed real estate broker, who is not a licensed attorney, to prepare an "ordinary deed" for another person, whether or not a charge is made for this service.

LEGAL SETTLEMENT; CONTINUITY

19 January 1955

Under the provisions of G. S. 153-159 every legal settlement shall continue until it is lost or defeated by acquiring a new one. A patient in the sanatorium who is released and takes up residence in a county other than that of his settlement at the time he was admitted to the sanatorium retains legal settlement in the original county unless and until he resides in the county to which he is released for a sufficient time to acquire a new settlement.

LEGAL SETTLEMENT; CONTINUITY; INTERRUPTION

3 August 1954

Legal settlement, as defined in G. S. 153-159, Subsection (1), means physical residence continuously in a county for one year and should be determined on an objective rather than subjective basis. Where a person begins to acquire legal settlement in X County and is admitted to a tubercular sanatorium one month afterwards, his admission to the sanatorium interrupts the continuity of residence required by G. S. 153-159 and such person retains the settlement he had acquired prior to his removal to X County.

LEGAL SETTLEMENT; CHILD; MARRIED WOMEN

9 July 1954

Legitimate children follow and have the settlement of their father, but in case the father has none in this state or is deceased, then they shall follow and have the settlement of their mother (Ref. G. S. 153-159), and the commitment of a child to a State Correctional Institution by the juvenile Court would not of itself affect the relationship between a parent and child so as to prevent the child from following and having settlement of its parent.

G. S. 153-159—"A married woman shall always follow and have the settlement of her husband, if he have any in this state . . .", therefore a married woman who is committed to a state mental institution, and whose

husband is settled in this state, will follow and have the settlement of her husband. No authority is noted which would indicate that a different rule would apply because the wife had been committed to a mental institution.

LEGAL SETTLEMENT; DEPRIVATIVE SETTLEMENT OF MINOR
CHILDREN OF DIVORCED PARENTS

2 December 1954

Where parents are divorced and no order is made regarding the custody of a minor child of the marriage, the child has the settlement of his father. Refer to G. S. 153-159, Subsection (3).

LEGAL SETTLEMENT; MARRIED WOMEN

15 October 1954

The settlement of a married woman always follows the settlement of her husband. See G. S. 153-159.

LEGAL FEES; QUO WARRANTO PROCEEDINGS

24 May 1955

Public funds may not be legally expended to pay counsel fees for either party in a quo warranto proceedings.

LEGAL SETTLEMENT; TACKING TOGETHER PERIODS

7 February 1955

The requirement of one year's continuous residence of a person in G. S. 153-159 so as to enable such person to acquire legal settlement in a county does not permit the tacking together of intermittent periods of residence, the total of which amount to one year.

LIENS; FACTORS LIENS; NOTICE

28 November 1955

Section 44-71 of the General Statutes sets forth the essential provisions as to posting notice of a factor's lien.

LIENS; MATERIAL AND LABOR LIEN; PRIORITY

15 May 1956

A material and labor lien would not have any priority over mortgages on a house which had been executed and recorded prior to the making of the contract for the materials and labor furnished for the repair of the house.

LIENS; PERSONAL INJURIES; PAYMENT OF MEDICAL EXPENSES, DRUGS, ETC.

23 July 1954

Article 9 of Chapter 44 of the General Statutes gives a lien to the extent of 50% of the damages recovered in personal injury cases for medical and hospital services. This, however, is but the measure of the lien and does not extinguish any excess amount due for such charges over and above the measure of the lien. The balance due can be filed as a general claim.

LOTTERY LAWS; ATTENDANCE PROMOTION SCHEME

16 March 1956

In order to constitute a lottery in this State, there must be three elements present, to wit: (1) a prize; (2) a consideration; and (3) the winner of the prize is to be determined by some formula of chance. See *STATE v. LIPKIN*, 169 N. C. 265.

LOTTERY LAWS; USE AND OPERATION OF ILLEGAL PUNCHBOARDS

29 March 1956

It is unlawful for a person to keep in his possession and permit to be operated any illegal punchboard. See G. S. 14-295.

If a person places an illegal punchboard in the hands of another person for the purpose of being operated, he would be guilty of violating G. S. 14-302.

MARRIAGE; ANNULMENT PROCEDURE

25 June 1956

Since the procedure in suits for annulment of marriages is assimilated to that in suits for divorce, no prosecution bond should be required in such suits.

MARRIAGE; AUTHORITY TO PERFORM MARRIAGE CEREMONY

3 November 1954

Under G. S. 51-1, a marriage ceremony may be legally performed in this State by an ordained minister of any religious denomination, minister authorized by his church, or by a justice of the peace.

MARRIAGE LAWS; AUTHORITY TO RECORD MARRIAGE CERTIFICATES

18 October 1954

There is no provision under the laws of this State for the recording of a marriage certificate in a county other than the county where the marriage license was issued.

MARRIAGE LAWS; MARRIAGE OF BLIND PERSONS

17 October 1955

There is no legal prohibition in this State against a blind person obtaining a marriage license and getting married here.

MARRIAGE LAWS; CAPACITY TO MARRY; WHITE PERSON
AND JAPANESE NATIONAL

2 September 1954

There is no law in this State which would prohibit the marriage between a white person and a Japanese National.

MARRIAGE LICENSES; AGE OF APPLICANTS

28 December 1954

A register of deeds is not liable to the penalty prescribed by G. S. 51-17 when he has made reasonable inquiry as to the age of applicants for marriage license.

MARRIAGE LAWS; NONRESIDENT ORDAINED MINISTER
MAY PERFORM CEREMONY

26 March 1956

An ordained minister of any religious denomination, or minister authorized by his church, may perform a marriage ceremony in this State.

MARRIAGE LAWS; PROXY MARRIAGES

18 April 1955

Marriages by proxy are not recognized in North Carolina.

MARRIAGE; DIVORCE LAWS; REMARRIAGE AFTER OBTAINING
ABSOLUTE DIVORCE

21 November 1955

A person who has received an absolute divorce in this State may immediately remarry. There is no law which requires a waiting period before such person may remarry.

MARRIAGES; VOIDABLE MARRIAGES; BIGAMOUS MARRIAGES;
LEGITIMACY OF CHILDREN

9 January 1956

Under the provisions of G. S. 50-11.1 a child born of a bigamous marriage is legitimate irrespective of whether a judicial annulment of the bigamous marriage is ever obtained.

MEDICINE; ILLEGAL PRACTICE OF MEDICINE; JURISDICTION OF OFFENSES

26 March 1956

Exclusive original jurisdiction to try cases for the illegal practice of medicine is vested in the Superior Court.

MEDICINE; PRACTICE OF MEDICINE; APPROVAL OF MEDICAL COLLEGES IN
FOREIGN COUNTRIES; EXAMINATIONS FOR LICENSE

11 July 1955

The State Board of Medical Examiners has a wide discretion in approving medical colleges, either in the United States or in foreign countries, and in accepting applicants to take medical examinations to practice medicine in this State.

MEDICINE; PRACTICE OF MEDICINE; OPTOMETRY

30 March 1956

Under North Carolina law, an optometrist is not authorized to advise patients concerning nutrition, nutritional deficiencies or poor eating habits, even though such deficiency may affect the patient's vision.

MILITIA; SERVICE OF PROCESS; PRISONERS

13 October 1955

Courts-martial established under authority of G. S. 127-38, et seq., are courts of this State to the same extent as are other courts of the State established by law and under the Constitution. Under the provisions of G. S. 127-43, when warrants are issued by the president of a courts-martial or a summary court and placed in the hands of a deputy sheriff or other police officer, the same procedure should be followed as in the case of warrants issued by other courts of the State.

When a warrant for the arrest of a member of the National Guard is placed in the hands of a civil officer and the defendant in such case is arrested thereunder, the person arrested has the same right to give bail as in any other case coming before the civil courts of the State where defendants are allowed to give bail for their appearance in court.

The civil authorities should hold the accused, either in custody or under bond, until the case is called for trial before the military court.

MORTGAGES; DEEDS OF TRUST; CANCELLATION UNDER G. S. 45-37

23 May 1956

It is thought that a deed of trust executed under authority contained in 16 U. S. Code, Section 590(r), et seq., may be cancelled of record by the Register of Deeds upon exhibition to him of the note marked paid and the deed of trust marked satisfied by the payee; but that the Register of Deeds is authorized to cancel a chattel mortgage executed by authority of the same statute only upon exhibition to him of the note marked paid by the payee and the chattel mortgage marked satisfied by the Farmers Home Administration, acting through a duly authorized agent. The authorization should be in the form of a power of attorney recorded in the county in which the deed of trust and the chattel mortgage are recorded. G. S. 45-37(2).

MOTOR VEHICLES; ACCIDENT REPORTING; APPLICATION OF G. S. 20-166

7 March 1956

An operator of a motor vehicle runs off the highway, and off the right-of-way and into shrubbery located about 15 feet from the edge of the right-of-way, on privately owned property. The shrubbery is damaged to the extent of approximately \$25. The operator at once leaves the scene without reporting the matter to the occupants of the house located on the premises, notwithstanding the fact that one of the occupants ran out of the house and within hearing distance called to the operator to stop. Under these facts, it appears that G. S. 20-166 applies, which requires the

driver of a vehicle involved in an accident or collision resulting in damage to property to immediately stop his vehicle at the scene of the accident and give his name, address, and other information to those whose property is damaged.

MOTOR VEHICLES; CRIMINAL OFFENSES; ARREST

5 October 1954

A police officer of the City of Laurinburg has the power to arrest without warrant for any misdemeanor or violation of a town ordinance committed in the presence of the officer. He makes such arrest at his peril.

MOTOR VEHICLES; CRIMINAL OFFENSES; ARREST WITHOUT WARRANT

8 September 1954

The charter of the Town of Forest City confers on the town officers authority to arrest without warrant for public drunkenness. Officers so arresting do so at their peril.

MOTOR VEHICLES; CRIMINAL OFFENSES; ARREST

26 August 1954

When an officer arrests without a warrant and has no authority to make such an arrest, but a warrant is later issued and served on the defendant, the Court has jurisdiction to hear the case.

MOTOR VEHICLES; CRIMINAL OFFENSES; ARREST WITHOUT WARRANT; TRIAL

26 August 1954

When a warrant has been issued, and the defendant appears and defends on the merits and after the trial raises the question of service of the warrant, his objection comes too late, he has waived service, and the action was properly before the court.

MOTOR VEHICLES; CRIMINAL OFFENSES; ARREST WITHOUT WARRANT;
WITHOUT THE JURISDICTION

5 October 1954

A city police officer cannot arrest within his jurisdiction without a warrant for a motor vehicle violation committed within his presence outside his jurisdiction.

MOTOR VEHICLES; CRIMINAL OFFENSES; COMMITTED ON CITY STREETS

3 December 1954

A highway patrolman has authority to arrest for motor vehicle offenses committed on city streets. Such charges may be heard by a Justice of the Peace, providing he otherwise has jurisdiction.

MOTOR VEHICLE LAWS; CRIMINAL OFFENSES; FOLLOWING FIRE APPARATUS

4 October 1954

Upon the approach of any police or fire department vehicle giving an audible signal, the driver of every other vehicle shall immediately drive the same to the right-hand edge or curb, clear of any intersection of highway, and shall remain in such position unless otherwise directed by a police or traffic officer until such police or fire department vehicle shall have passed. It is unlawful for any driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one block or park such vehicle within one block where fire apparatus has stopped in answer to a fire alarm.

MOTOR VEHICLES; CRIMINAL OFFENSES; HIT AND RUN

14 September 1954

The hit and run statutes do not except ambulance drivers involved in an accident while on a call from the duty of complying with the statute.

MOTOR VEHICLES; CRIMINAL OFFENSES; HIT AND RUN

7 February 1955

G. S. 20-166 (b) makes it the duty of a person involved in an accident resulting in injury or death to a person to stop immediately at the scene of the accident. Paragraph (c) of the same section makes it the duty of such person to give his name, address, and license number to the driver or occupant of the other vehicle. These are separate criminal offenses, each paragraph containing its own provision as to punishment. Conviction or acquittal on a charge of violating one paragraph does not bar prosecution on a charge of violating the other. A person charged with violating one alone may not be convicted upon evidence showing violation of the other.

MOTOR VEHICLES; CRIMINAL OFFENSES; JURISDICTION

1 July 1954

A Justice of the Peace does not have jurisdiction to try speeding offenses.

MOTOR VEHICLES; CRIMINAL OFFENSES; JURISDICTION

3 May 1955

A Justice of the Peace has criminal jurisdiction only in cases where the punishment cannot exceed a \$50.00 fine or 30 days imprisonment. Thus, he does not have jurisdiction to try charges of speeding, reckless driving, or drunken driving.

MOTOR VEHICLES; CRIMINAL OFFENSES; RECKLESS DRIVING

1 September 1955

The maximum punishment for reckless driving is a fine of \$100.00 or imprisonment for 60 days, or both such fine and imprisonment. This is prescribed by Section 20-176 of the General Statutes.

MOTOR VEHICLES; CRIMINAL OFFENSES; SPEEDING; ABC OFFICER

8 September 1954

An A.B.C. officer acting on information that he would apprehend an automobile transporting non-tax paid liquor at a distant point is authorized to exceed the speed limit providing he operates his automobile with due regard for safety.

MOTOR VEHICLES; CRIMINAL OFFENSES; PRIVATE ROADS

9 August 1954

The speed laws do not apply to private roads other than those on the grounds of certain institutions named in G. S. 20-140.1.

MOTOR VEHICLES; DEALER LICENSING LAW

8 July 1955

Under the particular circumstances, an auctioneer of motor vehicles is neither a dealer nor a salesman within the meaning of the Dealer Licensing Law of 1955.

MOTOR VEHICLES; DRIVER'S LICENSE; AGE OF APPLICANT

20 June 1955

Under no circumstances may a driver's license be issued to a person less than 16 years of age.

MOTOR VEHICLES; DRIVERS' LICENSES; CHAUFFEURS; CONTRACT CARRIERS

3 May 1955

Under the Motor Vehicle Laws prior to the enactment of H. B. 374 of the 1955 General Assembly, the driver of a contract carrier vehicle would not be required to have a chauffeur's license.

MOTOR VEHICLES; DRIVER'S LICENSES; CHAUFFEURS; DAIRY TRUCK DRIVERS

27 July 1955

A person who is employed for the principal purpose of operating a motor vehicle on the highways must have a chauffeur's license. With certain exceptions, a person operating a vehicle or combination of vehicles licensed for more than 15,000 pounds gross weight must have a chauffeur's license. The statute requires certain other drivers to have chauffeur's licenses but the opinion does not discuss these additional situations.

MOTOR VEHICLES; DRIVERS' LICENSES; CHAUFFEURS;
PRINCIPAL PURPOSE OF EMPLOYMENT

12 August 1955

If an individual is employed for the principal purpose of operating a motor vehicle, he must have a chauffeur's license. Whether he is so employed is a question of fact.

MOTOR VEHICLES; DRIVERS' LICENSES; CHAUFFEURS; PRINCIPAL
PURPOSE OF EMPLOYMENT

15 August 1955

A driver of a pick-up truck licensed for less than gross weight of 15,000 pounds requires a chauffeur's license if the principal purpose of his employment is to drive a motor vehicle; a driver of a vehicle licensed for more than 15,000 pounds is required to have a chauffeur's license under the 1955 amendment irrespective of whether he is principally employed to drive a motor vehicle.

MOTOR VEHICLES; DRIVER'S LICENSE; CHAUFFEUR'S LICENSE; PRINCIPAL
PURPOSE OF EMPLOYMENT

23 September 1955

Persons employed for the principal purpose of driving delivery trucks and motor bikes are required to have a chauffeur's license. Travelling salesmen, who drive company-owned cars and who have the incidental duty of transporting sample displays do not require a chauffeur's license as the principal purpose of their employment is not to operate a motor vehicle.

MOTOR VEHICLES; DRIVER'S LICENSE; CHAUFFEURS; PRINCIPAL
PURPOSE OF EMPLOYMENT

6 October 1955

The driver of a city garbage truck which would ordinarily be licensed for more than 15,000 pounds, except that being a city-owned truck it is not licensed for any particular weight but has a permanent license, is not required to have a chauffeur's license under that provision of G. S. 20-6 which requires such license in the case of those driving property-carrying motor vehicles which are licensed for more than 15,000 pounds. However the same section of the General Statutes requires a chauffeur's license for those employed for the "principal purpose" of operating a motor vehicle, and one who is employed for the "principal purpose" of driving a city garbage truck is required to have a chauffeur's license under this provision.

MOTOR VEHICLES; DRIVERS' LICENSES; CONVICTION WHAT IS; PRAYER FOR
JUDGMENT CONTINUED; NOLO CONTENDERE DISTINGUISHED

29 March 1956

While it is not entirely clear, it is probable that a finding of guilt or a plea of guilty upon which the court continues the prayer for judgment constitutes a "conviction" within the meaning of the Uniform Driver's License Act.

MOTOR VEHICLES; DRIVER'S LICENSE; CHAUFFEURS; SCHOOL ACTIVITIES BUS

31 October 1955

The term "school bus" contained in the statutory definition of chauffeur, in G. S. 20-6, includes a school activities bus as well as a regular State or county owned school bus, and an individual who holds a valid operator's license is not required to possess a chauffeur's license while driving a school activities bus.

MOTOR VEHICLES; DRIVER'S LICENSE; EXAMINERS

22 November 1954

A driver's license examiner of the Safety Division of the Highway Patrol is not entitled to require the Department to transport his goods, furniture and personal apparel when he is transferred from one point to another, the provisions of G. S. 20-192 applying only to members of the State Highway Patrol.

MOTOR VEHICLES; DRIVERS' LICENSES; EXEMPTIONS; ARMED FORCES

19 October 1954

A non-resident member of the armed forces may operate a motor vehicle in North Carolina under a valid operator's license issued by his home state. Such license would be valid for this purpose even though the expiration date shown on the license has passed if the state of issuance has a statute extending the use of such license by members of the armed forces until the expiration of a certain period of time following discharge.

MOTOR VEHICLES; DRIVERS' LICENSES; EXEMPTIONS; FARM TRACTOR

9 November 1955

A fourteen year old boy, operating a tractor, used such tractor to go to a store located about a mile from his farm to purchase some groceries; under G. S. 20-8 (b), a person over fourteen years of age is not required to have a driver's license while driving or operating a farm tractor "temporarily operated or moved on a highway;" these facts indicate a temporary operation on the highway for purposes of G. S. 20-8 (b).

MOTOR VEHICLES; DRIVERS' LICENSES; EXEMPTIONS; FARM TRACTOR

25 October 1955

A person over fourteen years of age may operate a farm tractor which is being "temporarily operated or moved on a highway" and in addition may operate a farm tractor upon a highway adjacent to or running in front of the land upon which such person lives when such person is actually engaged in farming operations; however, a person fourteen years of age or under may not operate a farm tractor, temporarily or otherwise, upon a highway *except* such person may operate a farm tractor upon a highway adjacent to or running in front of the land upon which such person lives when he is actually engaged in farming operations.

MOTOR VEHICLES; DRIVERS' LICENSES; EXEMPTIONS; GARBAGE TRUCK

15 February 1955

The driver of a vehicle used for collecting garbage is required to have an operator's license if the vehicle is used on the streets and highways.

MOTOR VEHICLES; DRIVERS' LICENSES; EXEMPTIONS; ROAD MACHINES

22 December 1954

A person whose driver's license has been revoked is entitled to drive a road machine temporarily operated or moved on a highway.

MOTOR VEHICLES; DRIVERS' LICENSES; EXPIRATION AND RENEWAL;
SERVICE MEN

7 November 1955

A nonresident having a valid operator's license from his home state may operate a motor vehicle in North Carolina. The face of the license does not necessarily establish the validity or invalidity of the license in the home state, since some states have extended the period of validity of licenses in the case of servicemen.

MOTOR VEHICLES; DRIVERS' LICENSES; EXPIRATION AND RENEWAL;
SERVICE MEN EXAMINATION

19 December 1955

A person serving on active military duty and holding a valid North Carolina operator's license, and who is stationed outside the State of North Carolina, may renew his driver's license by making application to the Department by mail, and in such cases the Department may waive examination ordinarily required for renewal of his operator's license.

MOTOR VEHICLES; DRIVERS' LICENSES; FOREIGN LICENSE

7 March 1955

A non-resident holding a valid operator's license from the state of his residence is permitted to operate a motor vehicle in North Carolina providing his privilege has not been suspended or revoked. However, in any event, the non-resident must be at least 16 years old. If he seeks to operate under a chauffeur's license, he must be at least 18 years old.

MOTOR VEHICLES; DRIVER'S LICENSE; LEARNER'S PERMIT;
DRUNKEN DRIVING; RIDER

20 December 1954

The mere fact that a person while under the influence of intoxicating liquor rides in an automobile driven after dark by the holder of a learner's permit does not constitute a criminal offense by such rider, there being nothing to show that such person was giving instruction or otherwise participating in the operation of the vehicle or had control of it.

MOTOR VEHICLES; DRIVERS' LICENSES; OPERATION AFTER REVOCATION OR
SUSPENSION; DRIVER OF TOWED VEHICLE

21 March 1955

Under a strict application of the facts presented, a person whose license has been suspended or revoked and who occupies the driver's seat of a towed vehicle is not guilty of driving after his license has been suspended or revoked.

MOTOR VEHICLES; DRIVER'S LICENSE; OPERATION AFTER LICENSE
SUSPENDED; DRIVING MOTOR VEHICLE ON PRIVATE PARKING LOT

21 March 1956

An individual whose driver's license has been suspended operates taxicabs on a privately-owned taxi lot which is used for parking purposes, and also drives motor vehicles on service station premises as a part of his employment by a gasoline service station. Under these circumstances, such individual is not operating a motor vehicle on a "highway" for purposes of the Driver's License Act and therefore is not required to have a driver's license in order to operate a motor vehicle at such places. Neither is there a violation of G. S. 20-28 which prohibits an individual whose license has been suspended from driving a motor vehicle upon any "highway" of the State while such license is suspended.

MOTOR VEHICLES; DRIVERS' LICENSES; REVOCATION AND SUSPENSION;
DRUNKEN DRIVING; AIDING AND ABETTING

13 May 1955

A motor vehicle operator who is convicted of drunken driving by aiding and abetting is subject to having his driver's license revoked under G. S. 20-17.

MOTOR VEHICLES; DRIVER'S LICENSE; OPERATION AFTER
REVOCATION OR SUSPENSION; FINANCIAL RESPONSIBILITY
ACT VIOLATION

7 March 1955

A person who operates a motor vehicle after his license has been suspended under the 1947 Financial Responsibility Act is guilty of a misdemeanor under G. S. 20-272 and is not guilty of violating G. S. 20-28.

MOTOR VEHICLES; DRIVER'S LICENSE; OPERATION AFTER REVOCATION OR
SUSPENSION; OLD FINANCIAL RESPONSIBILITY ACT

7 October 1954

An operator whose license has been suspended under the old Financial Responsibility Act for failure to satisfy a judgment is guilty of driving without a license when he is subsequently apprehended operating a motor vehicle.

MOTOR VEHICLES; DRIVERS' LICENSES; REVOCATION AND SUSPENSION;
FIRST CONVICTION

23 November 1954

For the purpose of determining the period of revocation on a drunken driving conviction, a conviction prior to April 5, 1947 would not be counted as a first conviction.

MOTOR VEHICLES; DRIVERS' LICENSES; REVOCATION AND SUSPENSION;
FORFEITURE OF BOND

18 April 1955

Under the Uniform Driver's License Act, a final forfeiture, not vacated, of bail given for appearance is the equivalent of a conviction.

MOTOR VEHICLES; DRIVER'S LICENSE; OPERATION AFTER REVOCATION;
FOREIGN OPERATOR'S LICENSE

12 June 1956

A North Carolina resident was convicted of a third offense of drunken driving and his license to operate a motor vehicle was permanently revoked. Subsequently he changed his residence to Florida and procured a Florida operator's license. His license in North Carolina continued to be permanently revoked. Such operator is not entitled to drive a motor

vehicle on the highways of North Carolina. His operation in this State on a Florida license while his license here was permanently revoked constituted a violation of G. S. 20-28 (b).

MOTOR VEHICLES; DRIVER'S LICENSE; REVOCATION AND SUSPENSION;
MANDATORY REVOCATION; DRIVING DRUNK

23 March 1955

When the Motor Vehicles Department is properly notified that a person has been convicted of the offense of driving under the influence of intoxicating liquor and the records of the Department show he has previously been convicted of the same offense, G. S. 20-19 (d) makes the revocation of such person's driver's license for three years mandatory. It is immaterial that the second judgment did not specify that the defendant had been previously convicted. Even though the defendant entered a plea of guilty in the Recorder's Court, he may appeal from the judgment of the Superior Court.

MOTOR VEHICLES; DRIVERS' LICENSES; OPERATION AFTER REVOCATION OR
SUSPENSION; MINIMUM FINE; DRIVING AFTER LICENSE REVOKED

8 March 1955

The provisions for fine or imprisonment or both contained in G. S. 20-28, governing driving after license is suspended or revoked, are in the alternative and the court is not required to impose both a fine and sentence, although it may do so.

MOTOR VEHICLES; DRIVERS' LICENSES; REVOCATION AND SUSPENSION;
NOLO CONTENDERE

26 October 1954

When a court has accepted a plea of nolo contendere, a finding by the court that the defendant was guilty is surplusage and of no legal effect. Pending further clarification by the Supreme Court, this office has advised the Commissioner of Motor Vehicles that he would be authorized to revoke a driver's license upon receipt of a record of the entering of a plea of nolo contendere to a charge of drunken driving.

MOTOR VEHICLES; DRIVERS' LICENSES; PERIOD OF SUSPENSION OR
REVOCATION; OPERATION AFTER REVOCATION OR SUSPENSION

11 October 1955

When a license is suspended or revoked under G. S. 20-28 (a) for an additional period (for driving while license is suspended or revoked), and

the original suspension is made under G. S. 20-279.5, the additional period of suspension or revocation will begin to run at the end of the original indefinite suspension given under 20-279.5. At the end of the additional period of suspension authorized under G. S. 20-28 (a), the driver would be required to file proof of financial responsibility as provided in G. S. 20-279.17, as a condition to reissuance of his license, inasmuch as there has been a suspension under Article 2 of Chapter 20 of the General Statutes. Where an individual's license has been suspended or revoked for a specified time, which period of suspension or revocation has run and thereafter the individual drives a motor vehicle without having had his license reissued, he should be charged with the offense of "driving without a license" and not "driving while license is suspended or revoked."

**MOTOR VEHICLES; DRIVERS' LICENSES; OPERATION AFTER REVOCATION OR
SUSPENSION; PUNISHMENT**

1 December 1954

Driving after license is revoked is punishable by a fine of not less than \$200 or imprisonment in the discretion of the court or both. The court may suspend fine and sentence on the usual conditions.

**MOTOR VEHICLES; DRIVER'S LICENSE; REVOCATION AND SUSPENSION;
RECKLESS DRIVING; TWO OFFENSES**

10 September 1954

Where a defendant has twice been convicted of reckless driving within a period of twelve months but the two offenses occurred more than twelve months apart, G. S. 20-17 does not apply and revocation of the driver's license is not required.

**MOTOR VEHICLES; DRIVER'S LICENSES; REVOCATION AND SUSPENSION;
REISSUANCE**

19 July 1954

A person whose driver's license has been revoked permanently for drunken driving may be issued a new license after the expiration of five years from revocation upon satisfactory proof that such person has been of good behavior for the past five years and that his conduct and attitude is such as to entitle him to favorable consideration.

**MOTOR VEHICLES; DRIVERS' LICENSES; REPORT FROM MENTAL HOSPITAL
UPON PATIENT ADMITTANCE**

2 May 1956

Under G. S. 20-17.1 (d), the North Carolina Memorial Hospital at

Chapel Hill (which has a psychiatric ward) is an institution for the care and cure of the mentally ill, and therefore is required to report to the Commissioner of Motor Vehicles the admission of each patient so that the Department of Motor Vehicles may have complete and accurate information on drivers licensed by the Department.

**MOTOR VEHICLES; DRIVER'S LICENSE; SAFETY-FINANCIAL RESPONSIBILITY
ACT; RIGHT OF LICENSEE TO FILE PETITION FOR COURT HEARING**

16 March 1956

An individual whose driver's license is suspended under G. S. 20-279.12 and G. S. 20-279.13, for failure to satisfy a judgment arising out of an automobile accident is not entitled to file a petition for a hearing before the Superior Court judge under the provisions of G. S. 20-279.2.

MOTOR VEHICLES; DRIVER'S LICENSE; SECOND CONVICTION

6 July 1955

When the Department receives a report of a conviction of drunk driving and ascertains from its own records that this is a second conviction for such an offense, the Department is required to impose a three-year revocation even though the warrant under which the second conviction was obtained does not specify that it is a second offense.

**MOTOR VEHICLES; DRIVERS' LICENSES; REVOCATION AND SUSPENSION;
SECOND CONVICTION; WARRANT**

6 July 1954

The Department of Motor Vehicles is required to revoke the operator's license of an operator incurring a second conviction for drunken driving even though the warrant does not allege a second offense.

**MOTOR VEHICLES; DRIVERS' LICENSES; REVOCATION AND SUSPENSION;
SOLICITOR'S TREATMENT OF SECOND CONVICTION**

22 November 1954

The Commissioner of Motor Vehicles is required to revoke for three years the operator's license of a person who has been twice convicted of drunken driving. That the Solicitor and the Court agree that the second conviction shall be treated as a first conviction does not alter the duty of the Commissioner.

MOTOR VEHICLES; DRIVER'S LICENSE; REVOCATION AND SUSPENSION;
SPEEDING; ACCESSORIES

7 October 1955

The Department of Motor Vehicles is authorized, under G. S. 20-16 (10), to suspend license upon conviction of operating a motor vehicle at a speed in excess of 75 miles per hour; and the Department may suspend under this section the license of an individual convicted of aiding and abetting in speeding at 110 miles per hour, under the general common law rule that there are no accessories in misdemeanors but that all participants are principals.

MOTOR VEHICLES; DRIVERS' LICENSES; REVOCATION AND SUSPENSION;
SPEEDING; "CONVICTION"

19 July 1954

The Department of Motor Vehicles is authorized to suspend licenses for two convictions of speeding in excess of 55 miles per hour when the convictions fall within a twelve months period. For this purpose, the term "conviction" requires a final conviction. Should an operator be convicted within the twelve months' period on the second charge in Recorder's Court and take an appeal to the Superior Court and the conviction in Superior Court fall outside the twelve months period, the Department would not be authorized to suspend the license.

MOTOR VEHICLES; DRIVERS' LICENSES; REVOCATION AND SUSPENSION;
SPEEDING; TWO OFFENSES

19 August 1954

G. S. 20-16 (a) 9 requires two convictions within a period of twelve months rather than two offenses committed within a period of twelve months in order for the Department of Motor Vehicles to have authority to suspend the license of the driver under that section.

MOTOR VEHICLES; DRIVERS' LICENSES; OPERATION AFTER REVOCATION OR
SUSPENSION; TIME

6 February 1956

An individual's driver's license is suspended or revoked for one year from January 1, 1955, through December 31, 1955. This individual is apprehended driving an automobile on January 2, 1956, without having had his license reissued. Under these facts, since the fixed period of suspension has run, the individual should be charged with operating a

motor vehicle without a driver's license, and not charged for the offense of driving a motor vehicle while license is suspended.

MOTOR VEHICLES; DRIVERS' LICENSES; OPERATION AFTER REVOCATION OR
SUSPENSION; VOLUNTARY SURRENDER OF LICENSE

10 February 1956

An individual was convicted of an offense for which the Department could, in its discretion, suspend his driver's license. After such conviction, the individual voluntarily surrendered his license on the assumption that the Department would enter an order of suspension and he wished that the period of suspension would begin and end as soon as possible. Shortly thereafter, before the individual received a notice of suspension of his driver's license, he was arrested for operating a motor vehicle while license was suspended. Under these facts, the individual concerned has probably not violated the statute which makes it unlawful to drive while license is suspended, inasmuch as an individual's license is not suspended without there having been some action on the part of the Department of Motor Vehicles, including official notice to the licensee.

MOTOR VEHICLES; EQUIPMENT; RED OR AMBER EMERGENCY LIGHT

14 March 1956

An amber emergency light may be attached to the left side of a disabled vehicle standing along side the highway and off of the traveled portion thereof.

MOTOR VEHICLES; EQUIPMENT; LOAD

26 August 1954

G. S. 20-116 (g) requires that a vehicle moving on the highway be so loaded as to prevent any of its load from escaping from the vehicle.

MOTOR VEHICLES; EQUIPMENT; MUFFLERS

14 March 1955

Whether use of a Hollywood muffler violates G. S. 20-128 raises a question of fact as to whether it prevents unusual noise or smoke.

MOTOR VEHICLES; EQUIPMENT; MUFFLERS

14 September 1954

A muffler must be designed to prevent excessive or unusual noise.

MOTOR VEHICLES; EQUIPMENT; SIRENS

18 March 1955

The statute does not authorize a town constable to use a siren on his private vehicle.

MOTOR VEHICLES; EQUIPMENT; SIRENS

13 June 1955

The requirement in G. S. 20-125 that every vehicle owned and operated by a fire department shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles applies to vehicles owned and operated by the Department as such, not to the personal vehicles of members.

MOTOR VEHICLES; EQUIPMENT; SIRENS

7 November 1955

Under G. S. 20-130.1, members of a voluntary fire department are authorized to install on their privately owned vehicles red signal lights, which signal light may be in use only when the vehicle is operated in the performance of the owner's duties as a voluntary fireman; under G. S. 20-125, only the chief and assistant chief of a voluntary fire department are authorized to use a siren on a privately owned vehicle while engaged in the performance of their duties as voluntary firemen.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY; LIABILITY POLICY

23 September 1955

The provisions of Section 20-279.21 of the General Statutes are not interpreted as limiting liability under that clause of the motor vehicle liability policy approved by the Commissioner of Insurance which expressly extends to the spouse of the insured the same rights and privileges as are afforded the insured.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; LICENSE

21 March 1955

The provisions of G. S. 20-28 apply only to a person whose license has been suspended or revoked under the Uniform Drivers' License Act. One who drives after his license has been suspended under the 1953 Financial

Responsibility Act is guilty of driving without a license. Statutory changes on this question have been proposed and are pending before the Legislature.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; LICENSES

10 February 1956

An individual who drives a motor vehicle while his license has been ordered suspended for failure to comply with the Financial Responsibility Act of 1953 is guilty of driving while license is suspended, within the meaning of G. S. 20-28, notwithstanding the fact that subsequent to such offense the individual filed a petition under G. S. 20-279.2 (b) which had the effect of staying the original order suspending the driver's license. Such stay of the driver's license suspension begins with the filing of the petition, and the filing of the petition does not make the original order of the suspension of the license null and void.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; MAXIMUM SECURITY

23 February 1956

Under the Financial Responsibility Act, security required to be posted on account of automobile accident damages to personal property only cannot exceed \$1,000.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; "OWNER"

12 October 1954

A parent taking legal title to an automobile when in fact the automobile is being purchased by his minor child is the "owner" of the automobile within the meaning of the 1953 Financial Responsibility Act.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; PERIOD OF SUSPENSION

13 February 1956

Under the 1947 Financial Responsibility Act, the Commissioner of Motor Vehicles is required to suspend the driver's license of one who has failed to satisfy a judgment as defined in G. S. 20-235, and there is no limit on the period of suspension so long as the judgment remains unsatisfied for purposes of this Act.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; PROOF OF
FINANCIAL RESPONSIBILITY

8 March 1955

When an operator whose license has been revoked under the Uniform

Drivers' License Act seeks return of his license, he must file proof of financial responsibility for the two-year period following reissuance of the license.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT OF 1953; REFUSAL TO SURRENDER LICENSE; NUMBER OF CONVICTIONS; FORMER JEOPARDY

29 March 1955

An operator who wrongfully refuses to surrender his license upon demand by the Department of Motor Vehicles may be convicted for each such offense. However, this rule is subject to the limitation that all such offenses occurring prior to the issuance of a warrant on the charge are covered by such warrant and a second charge can be based only on such offenses occurring after the issuance of the first warrant.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT OF 1953; RELEASE

28 April 1955

The State's claim for damages to its vehicle in an automobile collision cannot be released by the Solicitor's agreement to accept a plea in a criminal action with the understanding that if such plea is tendered and accepted no claim will be made for damages to the car. The sentencing of the defendant upon such a plea does not bar a suit by the State for damages to its vehicle. However, under such circumstances, the State should not suspend the defendant's driver's license under the Financial Responsibility Act.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; RELEASE

27 July 1954

In order to comply with the Motor Vehicle Safety and Financial Responsibility Act of 1953, a release executed by a minor or his guardian must be approved by a judge of the Superior Court. It is probably true that such approval can be obtained only by means of a formal suit in which evidence is presented and in which the court finds that the proposed settlement will be in the best interest of the minor.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT;
STATUTE OF LIMITATIONS

20 June 1955

The Financial Responsibility Act does not change the statute of limitations applicable to the bringing of suit for an automobile collision.

MOTOR VEHICLES; MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING;
EFFECT OF INCORPORATING AN ESTABLISHED AND LICENSED FIRM;
REQUIREMENT OF NEW LICENSE

16 January 1956

If a partnership is licensed under the Motor Vehicle Dealers and Manufacturers License Act in October 1955, and in January 1956 this partnership is dissolved, with the same partners forming a corporation and becoming stockholders in proportion to their interest in the former partnership, a separate business and legal entity has been formed, and as there is no express provision in the Act for transferring a partnership license to its successor corporation, the new corporation which is doing business covered by the Act is required to file prompt application and receive a license running directly to the corporation.

MOTOR VEHICLES; MUNICIPAL REGULATIONS

21 July 1954

Except for regulating speed at intersections as provided by G. S. 20-141 (f), local authorities do not have the authority to lower the speed limit on streets which are a part of the State highway system below the limit set by the statute. G. S. 20-141.

MOTOR VEHICLES; MUNICIPAL REGULATIONS

19 July 1954

The decision as to whether to install a traffic light upon a portion of the highway lying within the limits of an incorporated town is one to be made by the town commissioners.

MOTOR VEHICLES; MUNICIPAL REGULATIONS

7 February 1955

A city may not require the owner of an automobile to obtain a city license plate unless the automobile is normally garaged in the city when not in use.

A city may not impose a license tax upon an oil distributor who has no agency, station, or warehouse within the city, even though deliveries are made to customers within the city.

MOTOR VEHICLES; MUNICIPAL REGULATIONS

28 March 1955

Motor vehicles, whether owned by a dealer or not, resident in a municipality are subject to the \$1.00 license fee levied by the municipality.

MOTOR VEHICLES; MUNICIPAL REGULATIONS

21 January 1955

A town ordinance regulating the speed on a portion of the State highway passing through the town is invalid. The offense of speeding is not within the jurisdiction of a Justice of the Peace or a Mayor's Court, unless the jurisdiction of the Mayor's Court has been enlarged by special legislation.

MOTOR VEHICLES; MUNICIPAL REGULATIONS; SPEED LIMITS

15 November 1954

A municipality has no authority to reduce the speed limit established by G. S. 20-141 on a street which is a part of the State Highway System. No authority is found for a municipality's enacting regulations prohibiting passing on streets which are part of the State Highway System.

MOTOR VEHICLES; MUNICIPAL REGULATION; STOP LIGHT

11 January 1956

A city does not have the authority to enact an ordinance requiring ambulances to stop at a red stop light.

MOTOR VEHICLES; OVERLOADS; ASSESSMENTS

28 May 1956

A common carrier owns a number of truck tractors which are all licensed for 41,000 pounds gross weight, and a number of semi-trailers all of which are licensed for 17,000 pounds gross weight. Recently this common carrier borrowed or leased for a short period a tractor from an individual which was licensed for 20,000 pounds gross weight. The borrowed tractor was used with one of the carrier's semi-trailers which was licensed for 17,000 pounds gross weight, with the combined unit having a total licensed weight of 37,000 pounds. This unit was apprehended in operation over its licensed weight to the extent of 18,720 pounds. Penalty was assessed in accordance with G. S. 20-118 (1), amounting to \$596, with license fee of \$85.50. There was no axle or road weight violation, and it appears that the carrier borrowed the tractor because of a breakdown of its tractor which was licensed for 41,000 pounds, and that the arrangement was carried out by a subordinate employee of the common carrier who gave no thought to the possibility of incurring overweight penalties. Upon investigation, the Department concludes that the common carrier in question does not condone operation of equipment overweight nor is it, according to the records of the Department, a frequent violator of the overweight laws.

Regardless of circumstances involved, under the above statement of facts there has been a violation of the motor vehicle laws, and the Commissioner of Motor Vehicles does not have the discretionary authority to reduce or

cancel the penalty once he finds that there has been an overweight violation as set out above. G. S. 20-50 is explicit in placing upon the owner of every vehicle operated on the highways of the State responsibility for the proper licensing of such vehicle.

MOTOR VEHICLES; OVERLOADS; PENALTIES

10 January 1955

Notwithstanding reciprocity provisions, a non-resident whose vehicle has been found to exceed the weight limitations in G. S. 20-118 is liable for the penalties provided therein. Such penalties are not fines and may be collected without the institution of criminal proceedings.

MOTOR VEHICLES; PARKING VIOLATIONS

3 October 1955

G. S. 20-162.1 provides that when any motor vehicle is found parked on any street in violation of any statute or municipal ordinance limiting the time of parking, the same shall be *prima facie* evidence that the vehicle was so parked by the owner as shown by the registration and license records of the State Department of Motor Vehicles.

MOTOR VEHICLES; PUNISHMENT; MAXIMUM SENTENCE UPON CONVICTION OF DRUNKEN DRIVING

21 May 1956

Section 20-179 of the General Statutes sets forth the *minimum* punishment which must be imposed by the court upon conviction of operating a motor vehicle while under the influence of intoxicants or narcotics. Where the maximum punishment for a misdemeanor is not provided by statute, the maximum which may be imposed is within the discretion of the trial judge, subject only to the limitation that the punishment may not be "cruel and excessive." Our court has held that when no time is fixed by the statute, imprisonment for two years is not cruel and unusual punishment. *STATE v. PARKER*, 220 N. C. 416.

The maximum punishment upon conviction for reckless driving is a fine of \$100 or imprisonment for 60 days, or both such fine and imprisonment, as set out in G. S. 20-176.

MOTOR VEHICLES; REGISTRATION; MEMBER OF ARMED FORCES

5 June 1956

Mere presence in the State by a person in the performance of his duties as a member of the armed forces does not constitute residence in this

State. A member of the armed forces is presumed to continue to be a resident of his home state. However, sufficient evidence may be present to show that he has in fact changed his residence to North Carolina.

MOTOR VEHICLES; REPORT OF ACCIDENT

21 January 1955

A report must be filed with the Department of Motor Vehicles of any accident in which there is personal injury or death or total property damage in excess of \$100.00.

MOTOR VEHICLES; REPORT OF ACCIDENT

7 February 1955

Damage to the driver's own automobile must be included in computing the "total damage to property" growing out of a motor vehicle accident for the purpose of determining whether a report of such accident is required.

MOTOR VEHICLES; REPORT OF CONVICTION

10 January 1955

G. S. 20-24 does not require the court to forward to the Department of Motor Vehicles a notice of conviction of illegal transportation of intoxicating liquor. It does require such notice to be sent when the conviction is for reckless driving while engaged in the transportation of such liquor for sale.

MOTOR VEHICLES; REPORT OF CONVICTION

8 September 1954

All courts convicting of motor vehicle offenses are required to forward notice of such conviction to the Department of Motor Vehicles.

MOTOR VEHICLES; RULES OF THE ROAD; APPLICABILITY TO DIRT ROADS

22 December 1954

The rules of the road of the Motor Vehicle Laws apply to all public streets and highways, including a state-maintained dirt road.

MOTOR VEHICLES; RULES OF ROAD; CROSSINGS

12 December 1955

Before an individual can be found guilty of a violation of G. S. 20-143, relating to stopping for railway crossings, such crossings must have been designated and posted with the required sign as provided in G. S. 20-143.

MOTOR VEHICLES; RULES OF THE ROAD; DRIVING ON LEFT

8 March 1955

A rural mail carrier is not entitled to drive on the left side of the highway for the purpose of delivering mail.

MOTOR VEHICLES; RULES OF THE ROAD; ENTERING MAIN HIGHWAY
FROM PRIVATE DRIVE

18 March 1955

The driver of a vehicle entering a public highway from a private road must yield the right-of-way to vehicles approaching on the public highway.

MOTOR VEHICLES; RULES OF ROAD; PASSING AT INTERSECTION

17 April 1956

It is not unlawful to pass a vehicle on the right at an intersection if the vehicle overtaken and passed is in a lane designated for left turns or where the street has been marked for two or more lanes of moving vehicles in each direction.

MOTOR VEHICLES; RULES OF ROAD; PUNISHMENT

1 June 1956

A person may not be charged with a second offense of driving a motor vehicle under the influence, in violation of G. S. 20-138 and G. S. 20-179, when the first offense relied upon for this purpose was committed in another state. To prove that a person has committed a second offense within the meaning of G. S. 20-179, it is necessary to show that such person was previously convicted of violating G. S. 20-138; that is to say, it is necessary to show that the person was previously convicted of violating the North Carolina law and not the law of some other state.

MOTOR VEHICLES; RULES OF THE ROAD; RIGHT-OF-WAY

17 June 1955

Although the matter is not entirely clear, it is probable that a driver entering an intersection under a green light has the right-of-way over a driver entering the intersection on the basis of a sign permitting a right turn on a red light.

MOTOR VEHICLES; RULES OF THE ROAD; SPEED LIMITS; SCHOOL BUSES;
ACTIVITY BUS; STATE SCHOOL FOR THE BLIND AND DEAF

13 April 1956

An activity bus owned by the State School for the Blind and Deaf is subject to the 35 m. p. h. speed limit.

MOTOR VEHICLES; RULES OF THE ROAD; TURN SIGNALS

7 November 1955

If a motorist properly uses a proper electrical turn signaling device, he is not required to give hand signals.

MOTOR VEHICLES; RULES OF THE ROAD; TURN SIGNALS

29 March 1955

A turn signal given by means of an electrical device approved by the Department of Motor Vehicles is a sufficient turn signal even though given in the daylight hours.

MOTOR VEHICLES; RULES OF THE ROAD; YELLOW LINE

27 September 1954

When an operator passing a car discovers that it will be necessary to cross the yellow line to return to the right side of the road, he is authorized to cross in his lane.

MOTOR VEHICLES; SEIZURE AND SALE

16 November 1955

G. S. 18-6 was amended by the 1955 General Assembly to require advertisement in the case of an automobile seized which has been so altered as to be impractical to restore to its original manufactured condition and where no one claims the automobile.

MOTOR VEHICLES; SPEED REGULATION

9 November 1955

The governing body of a county has authority, under G. S. 20-141 (b), to set the speed limit on those roads and streets which are not under jurisdiction of the State Highway and Public Works Commission or under the jurisdiction of some other "local authority" at not less than 25 miles per hour; the governing body of a county, under G. S. 136-31, is authorized to post speed limit signs; there is no statute authorizing private citizens to post speed signs and under Chapter 231 of the 1955 Session Laws, such action is apparently illegal.

MOTOR VEHICLES; TAXICABS

27 July 1954

The definition of a "taxicab" contained in G. S. 20-87 as being a vehicle, otherwise meeting the requirements of the statute, seating nine or fewer passengers is synonymous with a definition of a similar motor vehicle seating eight or fewer passengers, other than the driver, the word "passengers" as used in the section being inclusive of the driver.

MOTOR VEHICLES; TITLE AND REGISTRATION; COMMON CARRIER

10 March 1955

When a common carrier of passengers transports school children on a charter trip, the revenue received is subject to the 6% tax on gross receipts.

MOTOR VEHICLES; TITLE AND REGISTRATION; EXEMPTION OF WOODSAW

7 March 1956

A 1929 Ford automobile has been stripped down and altered to saw wood, with the vehicle having only a front seat and with the woodsaw fixed at the rear of the vehicle. The owner uses this vehicle for sawing wood for himself and for his neighbors; and on occasion has used the vehicle for pulling a drag harrow on his farm. This vehicle is not exempt from registration under the motor vehicle laws, unless it can qualify as a "farm tractor" which is defined in G. S. 20-38 as a "motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry." On the facts stated, it appears that the primary use of the vehicle is for sawing wood and not for use as a farm tractor within the definition of the statute.

MOTOR VEHICLES; TITLE AND REGISTRATION; JOINT TENANTS

10 February 1956

If a motor vehicle is registered in the names of more than one person "as joint tenants with right of survivorship," the Department of Motor Vehicles does not have authority to transfer title and registration of the vehicle to the "surviving owner" simply upon the basis of this form of registration. Survivorship in joint tenancy, in both real and personal property, has long been abolished in this State by statute; however, the right to survivorship in personalty can be established by contract between the parties. The Department of Motor Vehicles has authority, in its discretion, to accept application for registration of motor vehicles in the name of two or more individuals with a notation of "survivorship" as being some evidence that the parties have contracted for such right of survivorship. However, upon the death of one of the owners title and registration should not be transferred to the surviving owner without more specific evidence that the parties have so contracted.

MOTOR VEHICLES; TITLE AND REGISTRATION; MORTGAGES

15 November 1954

When personal property covered by a mortgage is brought into North Carolina from another state and acquires a situs here the prior mortgage ceases to be valid as against purchasers or other lien creditors unless such mortgage is registered in this State within 10 days after the mortgagee has knowledge that the property has been brought into this State. Even though he does not have such knowledge the mortgage ceases to have validity as against the purchasers and lien creditors unless registered in this State within four months after the property has been brought into North Carolina. This is true notwithstanding the fact that the existence of the prior mortgage is stated on the certificate of title to a motor vehicle.

**MOTOR VEHICLES; TITLE AND REGISTRATION;
NON-RESIDENT EMPLOYED IN STATE**

27 October 1955

A school teacher, resident of South Carolina, who is employed in this State in the public school system and returns to her home in South Carolina on the weekends, is required to register her automobile in North Carolina and pay the usual license fee. This situation is governed by the reciprocity agreement in effect between North Carolina and South Carolina, which agreement provides that a resident of either State going into the other State must register his automobile in the State of non-residence within thirty days after gainful employment is accepted in the State of non-residence. Under the reciprocity agreement, North Carolina grants

full reciprocity to a resident of a neighboring State who works in North Carolina but maintains his residence in his home State, *returning thereto* each day. The individual in question does not come within this arrangement as she remains in this State during the week, returning only on weekends.

MOTOR VEHICLES; TITLE AND REGISTRATION; NON-RESIDENT VEHICLE
USED IN NORTH CAROLINA

21 January 1955

A vehicle belonging to a non-resident and licensed in the non-resident's state of residence may be operated in interstate commerce in North Carolina without displaying North Carolina license plates provided North Carolina has a reciprocity agreement with the state of residence of the owner. If the vehicle is operated in intrastate commerce in North Carolina, it would be required to display North Carolina license tags, unless a thirty-day permit has been procured.

MOTOR VEHICLES; TITLE AND REGISTRATION; NORTH CAROLINA RESIDENTS
LEASING VEHICLES

11 May 1956

Property-hauling vehicles owned by residents of North Carolina are leased to a Florida trucking concern and have "for hire" Florida license plates. Under G. S. 20-50, such vehicles are not authorized to operate on North Carolina highways under the Florida registration, but are required to be registered in North Carolina in order to operate on the highways in this state.

MOTOR VEHICLES; TITLE AND REGISTRATION; SAWMILL

8 March 1955

Under the particular facts presented the sawmill involved is special mobile equipment taxable under G. S. 20-87. Under the particular facts presented, the chassis for towing the sawmill is a property hauling vehicle required to be registered and licensed under G. S. 20-28.

MOTOR VEHICLES; TITLE AND REGISTRATION; SPECIAL MOBILE EQUIPMENT

13 December 1954

Although a self-propelled vehicle is designed as a farm tractor, if it is not used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry but as a woodsaw mounted upon it and is driven on the highways in going from one woodsawing job to another, such machine is required to be licensed under the Motor Vehicles Act.

MOTOR VEHICLES; TITLE AND REGISTRATION; SPECIAL MOBILE EQUIPMENT

13 July 1954

A jeep mounted for spraying is special mobile equipment unless the primary use is the hauling of materials along the highway. If the jeep is used on the highway solely for the purpose of crossing from one property to another, as distinguished from travel along the highway, it is exempt from registration.

MOTOR VEHICLES; TITLE AND REGISTRATION; SPECIAL MOBILE EQUIPMENT

13 July 1954

The Department of Motor Vehicles has defined a Loraine Model TL-20 Moto-Crane as special mobile equipment subject to the \$3.00 license tax.

MOTOR VEHICLES; TITLE AND REGISTRATION; TIME OF EXPIRATION

28 December 1954

A motor vehicle owner is entitled to use the preceding year's license plates through January 31 of the following year.

MUNICIPAL CORPORATIONS; APPROPRIATION OF PUBLIC FUNDS TO UNITED STATES ARMY AND AIR FORCE RESERVE ACTIVITIES

26 March 1956

There is no authority for a municipality to appropriate public funds or donate public property to units of the United States Army and Air Force Reserves.

MUNICIPAL CORPORATIONS; ATTORNEY; AUTHORITY TO HIRE ON RETAINER BASIS

4 November 1954

The governing body of a municipality is without authority to employ on a retainer basis or in particular cases an attorney to defend persons in the Municipal Court who are not financially able to employ counsel.

MUNICIPAL CORPORATIONS; ATTORNEY'S FEES;
PUBLIC UTILITY RATE CASES

12 August 1954

A municipality which did not participate in a rate proceeding before the Utilities Commission, and which did not participate in the employment of

an attorney who represented the ratepayers in such case, is not legally bound to contribute to the payment of the attorney's fee and, therefore, may not use public funds to contribute to the payment of such fee.

MUNICIPAL CORPORATIONS; AUTHORITY OF FIRE DEPARTMENT
OUTSIDE TOWN LIMITS

12 July 1954

The governing body of a municipality may provide for protection against fire of property outside its corporate limits, within an area of not more than twelve miles therefrom, upon such terms as the governing body may determine. In the event of the loss of property by any citizen of a town while its fire-fighting apparatus is performing out-of-town service, it is thought that the residents of the town would not have a claim in such cases because their fire protection rights are not based on contract. See 19 N. C. Law Review, page 499.

MUNICIPAL CORPORATIONS; AUTHORITY TO CONDEMN
PROPERTY OUTSIDE TOWN LIMITS

21 February 1955

A municipality has authority to acquire, by purchase or condemnation, property for the purpose of maintaining its water supply either within or without the limits of the municipality. See G. S. 160-204 and G. S. 160-205. See also G. S. 160-255.

G. S. 130-111 specifically authorizes a municipality to condemn lands necessary for the successful operation of a water system.

MUNICIPAL CORPORATIONS; BEACH EROSION

2 May 1955

No statute authorizes municipalities to adopt ordinances protecting sand barriers erected at public expense against sea tides and, in the absence of such statute, it is doubted that such an ordinance could be validly passed. It is suggested that legislation be secured authorizing municipalities and counties to adopt such ordinances.

MUNICIPAL CORPORATIONS; BUILDING CODE; BUILDING PERMITS

1 September 1954

Under G. S. 160-146, municipalities are authorized to issue building permits for the erection of new buildings and the repair and alteration of old buildings, and to make charges therefor in amounts ranging from \$2.00 to \$5.00, according to the type of building which is being erected, repaired or altered.

MUNICIPAL CORPORATIONS; CITY HALL; SALE; ERECTION
ON LEASED PROPERTY

2 May 1956

A town may not sell its city hall without special enabling legislation unless it becomes surplus by reason of acquisition of other quarters. A town does not have authority to build a town hall on property which it does not own, but which would be leased for such purpose.

MUNICIPAL CORPORATIONS; CIVIL SERVICE EXAMINATIONS; PUBLIC OFFICIALS

3 April 1956

When a local act provides that a person must be a qualified voter of the town in order to be eligible for certain town civil service examinations, a person must be registered to vote in a municipal election of said town in order to be eligible for a town civil service examination.

MUNICIPAL CORPORATIONS; CONTRACTS WITH COMMISSIONERS

14 January 1955

A Commissioner of a city may not sell property to the city even though the sale is handled on the basis of competitive bidding.

MUNICIPAL CORPORATIONS; CONVEYANCE OF PROPERTY

26 October 1955

A municipality may, in accordance with the provisions of G. S. 131-126.26 and 131-28.2, convey a municipally owned and operated hospital to a county or non-profit organization without the necessity of sale at public auction.

MUNICIPAL CORPORATIONS; DISPOSITION OF ARREST AND SERVICE FEES;
USE OF CITY-OWNED AUTOMOBILE BY SALARIED POLICEMEN

5 August 1954

A municipality has authority to direct that arrest and service fees of salaried police officers be paid into the general fund of the municipality.

MUNICIPAL CORPORATIONS; ELECTIONS; BALLOT BOXES; FOLDING BALLOTS

5 April 1955

Under amendment to G. S. 163-168 of the 1953 General Assembly, the voter can be permitted, in the discretion of the election officials, to cast an

unfolded ballot, although there are some apparent conflicts in this position and G. S. 163-166.

MUNICIPAL CORPORATIONS; ELECTIONS; BOND ELECTION

30 August 1955

Construing together G. S. 63-2, G. S. 63-49, G. S. 63-50 and G. S. 160-378, it is thought that a municipality in this State may call an election for the issuance of bonds for the purpose of acquiring property and constructing an airport outside its city limits. *TURNER v. REIDSVILLE*, 224 N. C. 42, and *REIDSVILLE v. SLADE*, 224 N. C. 48.

MUNICIPAL CORPORATIONS; ELECTIONS; PRIMARIES

13 January 1955

A municipality cannot exclude persons from filing as candidates for mayor or member of the board of aldermen, when the charter or statutory provisions permit them to do so, because of voluntary nominations by groups representing political parties in a municipality. Such nominations would not be legally binding on other citizens who might wish to file and become a candidate.

MUNICIPAL CORPORATIONS; ELECTIONS; REGISTRATION BOOKS

25 February 1955

In a municipal extension election, an interested citizen may copy the registration books at reasonable times and under direction, supervision and control of the registrar, when such would not interfere with the activities of the registrar or the conduct of the election. Such copying should be done when allowed within the discretion of the registrar.

MUNICIPAL CORPORATIONS; ELECTIONS; TIME FOR FILING; CANDIDATES

9 March 1955

Under the general municipal law, no time is fixed for filing notice of candidacy for non-partisan municipal elections. Unless some charter provisions or local acts control, notice should be given that filing should be made in time to permit municipal authorities to print and distribute the ballots.

MUNICIPAL CORPORATIONS; EXPENDITURE OF FUNDS; BUSINESS DEVELOPMENT CORPORATION; INVESTMENT IN STOCK

9 February 1956

There are no specific provisions in Chapter 53A of the General Statutes, authorizing the creation of business development corporations, which would authorize cities and towns to invest in the stock of such corporations.

MUNICIPAL CORPORATIONS; EXPENDITURE OF FUNDS; ERECTION
OF BUILDING FOR RENTAL PURPOSES

19 May 1955

It is doubtful that a municipality in North Carolina has the authority to expend public funds on hand to erect a building for the purpose of leasing the same to the Federal government for use as a post office. G. S. 160-1; G. S. 160-2(2); G. S. 160-300(13); ADAMS v. DURHAM, 189 N. C. 232; AIRPORT AUTHORITY v. JOHNSON, 226 N. C. 1; GREEN v. KITCHIN, 229 N. C. 450.

MUNICIPAL CORPORATIONS; EXPENDITURE OF FUNDS; EXPENSES OF U. S. O.

11 July 1955

A municipal corporation is not authorized to make an appropriation for the benefit of a U. S. O. operating within its corporate limits since such an appropriation would not be for a necessary expense or for a public purpose.

MUNICIPAL CORPORATIONS; EXPENDITURE OF FUNDS; GARDEN CLUBS

29 October 1954

There is no authority for a municipal corporation to make an appropriation to a garden club to beautify and landscape the grounds surrounding a railroad station.

MUNICIPAL CORPORATIONS; EXPENDITURE OF FUND; NATIONAL GUARD
ARMORY BUILDING PROGRAM

8 June 1955

A city and town may appropriate funds and raise money by taxation and issue bonds and notes to secure funds to meet appropriations for the construction of National Guard facilities. This is a necessary expense within the meaning of Article VII, Section 7, of the Constitution.

MUNICIPAL CORPORATIONS; EXPENDITURE OF FUNDS;
PURCHASE OF LAND FOR RECREATION PURPOSES

8 August 1955

The imposition of a tax or the expenditure of funds derived therefrom for municipal parks and recreational facilities is for a public purpose but it is not for a necessary municipal expense, Article VII, Section 7, of the State Constitution, and the expenditure of funds for this purpose derived from a tax imposed without a referendum will be enjoined by the courts.

MUNICIPAL CORPORATIONS; EXPENDITURE OF FUNDS;
CIVIL DEFENSE; PURCHASING A RESCUE TRUCK

17 December 1954

In the furtherance of its civil defense program, a municipality may appropriate funds for the purpose of purchasing a rescue truck to be owned jointly by other municipalities within a county for their joint use.

MUNICIPAL CORPORATIONS; EXPENDITURE OF FUNDS; TAX REVENUES;
TOWN OF BATH CELEBRATION

18 August 1955

Constitutional and statutory prohibitions do not permit the Town of Washington to make a donation from ad valorem tax revenues to the Town of Bath Anniversary Celebration.

MUNICIPAL CORPORATIONS; EXPENDITURE OF FUNDS; USE OF NON AD
VALOREM TAX FUNDS FOR RECREATIONAL PURPOSES

13 July 1954

Even though the voters have recently disapproved the levy of a tax for recreational purposes under the provisions of G. S. 160-163(2), it would seem that a municipality may appropriate non ad valorem tax revenues for such purpose. This situation is to be distinguished from that discussed by the Supreme Court in *PURSER v. LEDBETTER*, 227 N. C. 1.

There seems to be no statute fixing the time within which another special election for recreational purposes may be held within the same municipality.

MUNICIPAL CORPORATIONS; EXPENDITURE OF FUNDS; USE OF SURPLUS FUNDS
TO PAY SALARY OF RED CROSS WORKER; CONTRIBUTIONS

27 May 1955

There is no authority for a municipality to pay any part of the salary of a Red Cross worker.

A municipality may not contribute public funds to the Merchants' Association to be used to pay the expense involved in parades and advertisements.

A municipality may contribute public funds for recreational purposes provided the appropriation is not made from ad valorem tax revenues. See *PURSER v. LEDBETTER*, 227 N. C. 1.

MUNICIPAL CORPORATIONS; EXTENSION OF CORPORATE LIMITS; ABSENTEE
VOTING

17 December 1954

Absentee ballots may not be used in municipal elections to extend the corporate limits of the municipality.

MUNICIPAL CORPORATIONS; EXTENSION OF CORPORATE LIMITS; ADOPTION
OF ORDINANCES AT REGULAR OR SPECIAL MEETINGS;
TERRITORY IN WHICH ELECTION HELD

14 July 1955

In proceedings to annex territory to a municipality, the governing board may do one of three things: (1) pass an ordinance and, in the absence of a petition, adopt an ordinance annexing the desired territory to the corporate limits of the municipality; (2) if a proper petition is filed and signed by at least fifteen per cent (15%) of the qualified voters resident in the area proposed to be annexed, the governing body shall, before passing the ordinance, submit the question of annexation to the qualified voters of the area proposed to be annexed, and, in the discretion of the governing body, the question may be submitted to the residents of the municipality voting separately; or (3) if a petition is filed by at least fifteen per cent (15%) of the qualified voters residing in the municipality requesting the same, the board is required to submit the question of annexation to the qualified voters residing in the municipality.

MUNICIPAL CORPORATIONS; EXTENSION OF CORPORATE LIMITS; ANNEXATION

11 August 1955

A municipality may, by ordinance, annex to its corporate limits property which it owns adjacent thereto. There is no authority for a city to join in a petition for the annexation of territory lying outside its corporate limits.

MUNICIPAL CORPORATIONS; EXTENSION OF CORPORATE LIMITS; BEGINNING
OF TAXABILITY OF PROPERTY INCLUDED

20 September 1954

Under the Act authorizing municipalities to extend their boundaries, the property within the extended area is subject to municipal taxes for the next succeeding fiscal year.

MUNICIPAL CORPORATIONS; EXTENSION OF CORPORATE LIMITS;
MEANING OF WORD "CONTIGUOUS"

3 February 1955

The word "contiguous" as used in G. S. 160-445, authorizing municipalities to extend their corporate boundaries to contiguous tract or tracts, would probably include land lying across a state highway which forms the present boundary of the municipality.

MUNICIPAL CORPORATIONS; EXTENSION OF CORPORATE LIMITS;
QUALIFICATION OF VOTERS

20 April 1956

It is thought that the qualifications for voting in an election for the extension of corporate limits under Article 36, Chapter 160 of the General Statutes, are the same as for other elections as set out in Article VI, Section 2 of the State Constitution and G. S. 163-25. OWENS v. CHAPLAIN, 228 N. C. 705, and HANNON v. GRIZZARD, 89 N. C. 115.

MUNICIPAL CORPORATIONS; FINANCES; SUPPORT OF
VOLUNTEER FIRE DEPARTMENT

8 March 1956

Municipal funds may be spent for the purpose of providing fire protection for the inhabitants of a municipality and property therein, and while the law is not specific on the point, I am of the opinion that this purpose may be accomplished through a contractual arrangement with a volunteer fire department.

MUNICIPAL CORPORATIONS; FINGERPRINTING OF
MOTOR FREIGHT CARRIER EMPLOYEES

7 October 1955

A municipal corporation does not have authority, by ordinance, to require fingerprinting of employees of motor freight carriers.

MUNICIPAL CORPORATIONS; FIRE DEPARTMENT

5 November 1954

Under G. S. 160-235, any municipality in this State is authorized to provide for the organization, equipment, maintenance, and government of fire companies and a fire department. Under this statute, the town may main-

tain a paid fire department or support and equip a volunteer fire department.

MUNICIPAL CORPORATIONS; FISCAL CONTROL; DEPOSITORIES

3 May 1956

An industrial bank which can furnish the security required by G. S. 159-28 may be used as a municipal depository.

MUNICIPAL CORPORATIONS; HURRICANE DISASTER; REMOVAL OF HOUSE FROM STREETS

22 November 1954

A municipality may not "assess" the cost of removing obstructions from the streets, caused by the recent hurricane, against the property owner whose house or property has been washed into the street. Whether or not the town could collect cost of removing obstructions, after notice to the property owners by way of implied promise to pay is QUERY.

MUNICIPAL CORPORATIONS; INTEREST ON INVESTED PROCEEDS OF EXCESS BOND FUNDS

20 May 1955

The unexpended proceeds of bond funds may be invested as provided by G. S. 159-49.1. The earnings from such investment may be applied to the payment of interest or principal of bonds from which such proceeds were derived or may be applied as an increment to such proceeds.

MUNICIPAL CORPORATIONS; MAYOR; VACANCIES

3 May 1956

When a mayor resigns, the vacancy created by his resignation should be filled by the Board of Commissioners of the town by appointing any qualified person. The mayor *pro tem* may not fill the full unexpired term.

MUNICIPAL CORPORATIONS; MEANING OF THE WORD "CITY"

9 November 1955

Whether a municipality is designated as a city or town in North Carolina depends solely on the provisions of the charter.

MUNICIPAL CORPORATIONS; NECESSARY EXPENSES

16 January 1956

What is a necessary municipal expense within the meaning of Article VII, Section 7 of the State Constitution, is a question of law to be determined by the courts. Whether a particular item coming within the approved classification is a necessity for a particular municipality is a question of fact to be determined by the governing body. *WILSON v. HIGH POINT*, 238 N. C. 14; *SING v. CHARLOTTE*, 213 N. C. 60; *POWER COMPANY v. CLAY*, 213 N. C. 698; *STARMOUNT COMPANY v. HAMILTON LAKES*, 205 N. C. 514. A municipal building is a recognized municipal necessity for municipalities in this State. *HIGHTOWER v. RALEIGH*, 150 N. C. 569 and *WESTBROOK v. SOUTHERN PINES*, 215 N. C. 20.

MUNICIPAL CORPORATIONS; OFFICERS; VACANCY IN OFFICE OF MAYOR

28 December 1954

In the absence of charter provisions to the contrary, a vacancy in the office of mayor of a municipality may be filled by action of the governing board, and the board is not required to select a person to fill the vacancy who is a member of the board.

MUNICIPAL CORPORATIONS; ORDINANCES; ARREST WITHOUT
WARRANT; POWER TO ADOPT

7 October 1954

In the absence of a town charter provision or a specific act authorizing such action, a municipality cannot adopt an ordinance providing for arrest without warrant for public drunkenness.

MUNICIPAL CORPORATIONS; ORDINANCES; BIRD SANCTUARIES

9 July 1954

G. S. 160-166.1, et seq., provides that the governing body of any municipality in this State may, in its discretion, by ordinance, create and establish a bird sanctuary within the territorial limits of such municipality.

MUNICIPAL CORPORATIONS; ORDINANCES; CURFEW

3 January 1956

A municipality has no authority to enact curfew ordinances which would prevent children loitering on the streets at night.

**MUNICIPAL CORPORATIONS; ORDINANCES; DOOR-TO-DOOR SALESMEN;
PROHIBITING OUT-OF-TOWN SALESMEN**

1 March 1956

A town governing body is without authority to adopt a valid ordinance prohibiting out-of-town salesmen from engaging in door-to-door selling in the residential district of the town.

MUNICIPAL CORPORATIONS; ORDINANCES; OBSCENE PRINTED MATTER

1 February 1956

A municipality apparently has authority to enact an ordinance regulating distribution of obscene pictures and other printed matter within the municipality, but such ordinance may not conflict with provisions of G. S. 14-189 (State-wide statute regulating obscene literature).

MUNICIPAL CORPORATIONS; ORDINANCES; REGULATION OF HOURS OF BARBERS

30 January 1956

Subsection 39 of Section 160-200 of the General Statutes of North Carolina authorizes city governing bodies to adopt ordinances regulating the opening and closing hours of barber shops.

**MUNICIPAL CORPORATIONS; ORDINANCES; REQUIRING REMOVAL OF
WEEDS AND TRASH**

7 November 1955

Municipal ordinances may be passed providing for the removal of noxious weeds and for the payment of the expense thereof by assessment or otherwise.

G. S. 160-55 provides that municipalities may pass laws abating or preventing nuisances of any kind and for preserving the health of the citizens. G. S. 160-200(8) is the specific statutory authority which grants to the municipality power to provide for the destruction of noxious weeds and for the payment of the expense thereof by assessment or otherwise.

In the absence of a clear showing that the trash or offensive matter is detrimental to the health, morals, comfort and safety of the public, I do not think that the aforementioned sections authorize a levy and collection of assessments as is done for special improvements as to anything except noxious weeds.

An ordinance which embraces a civil penalty for its violation would be valid, but one which by its terms attempts to create a criminal offense would be invalid.

MUNICIPAL CORPORATIONS; ORDINANCES; TRAFFIC HAZARDS ON
PRIVATE PROPERTY

28 December 1955

Apparently a municipality has authority to enact an ordinance, having prospective application but not retroactive, regulating the use of private property adjacent to the city streets, so as to prohibit the erection or installation of structures (including advertising signs and outdoor lights) and the planting and maintenance of shrubbery which would constitute a traffic hazard on adjacent streets.

MUNICIPAL CORPORATIONS; ORGANIZATION

2 June 1955

A municipal corporation may be created under the provisions of G. S. 160-197 and 160-198. The corporate limits of another municipality may not be extended to include the area within the existing municipality.

MUNICIPAL CORPORATIONS; PARKING; OFF-STREET PARKING;
FUNDS WHICH MAY BE USED

2 March 1956

When a town governing body has made a finding that the establishment of off-street parking facilities is a public necessity and convenience for that particular town, expenditure of funds therefor would be for a public purpose and nontax funds not otherwise appropriated or required by statute to be used for other purposes, could be used in defraying the expenses of such off-street parking facility.

MUNICIPAL CORPORATIONS; PARKING METERS; FRACTIONAL
PARKING WITHIN ONE AND TWO HOUR ZONES

14 December 1954

A municipality may establish a maximum parking time measured by parking meters and may permit fractional parking time within the maximum but violations of fractional parking periods cannot be enforced by penal restrictions.

MUNICIPAL CORPORATIONS; PARKING METERS; PLACING
METERS IN FRONT OF THEATRES AND CHURCHES

6 August 1954

There is no general law in this State relating to the locating of parking meters in front of theatres and churches.

The regulation of parking in municipalities is vested entirely in the governing bodies of such municipalities.

MUNICIPAL CORPORATIONS; PARKING REGULATIONS; DOCTORS

21 January 1955

Municipalities have no authority to enact ordinances which would provide for private parking spaces for doctors and dentists on public streets of a town.

MUNICIPAL CORPORATIONS; POLICE; AGE REQUIREMENTS

7 October 1955

A person must be at least twenty-one years of age before he can legally serve as a municipal policeman.

MUNICIPAL CORPORATIONS; POLICE; JURISDICTION

25 August 1955

The jurisdiction of municipal police officers does not extend beyond the city limits of the municipality or such other limits as are prescribed by local laws. Thus, a police officer may not legally pursue a misdemeanor beyond the city limits and arrest him. If he pursues a felon and arrests him outside the city limits, he may do so legally as a private citizen so long as he complies with the requirements of G. S. 15-40.

MUNICIPAL CORPORATIONS; POLICE POWER; AMUSEMENT GAME OPERATORS; CONDITIONS OF LICENSES; REVOCATION OF LICENSES

7 March 1956

G. S. 160-200, Subsection 6, authorizing a town governing body to supervise, regulate or suppress public recreations, amusements and entertainments in the interest of public health, morality and safety would not authorize the Town, by ordinance, to refuse to issue a license to operate lawful games of amusement merely because the applicant of the license had heretofore been convicted of certain enumerated crimes. The Town by ordinance could provide for the revocation of a license when the game of amusement was being operated to the detriment of public health, morality or safety.

MUNICIPAL CORPORATIONS; POLICE; RESIDENCE REQUIREMENTS

25 May 1955

A municipal policeman must be a resident of the municipality which he serves.

MUNICIPAL CORPORATIONS; POLICE; SALARIES

16 November 1954

A municipality can fix the compensation of police officers, having in mind that their salaries are subject to payment of Federal and State income taxes, but no additional sums could be paid to them on account of services which are not actually contemplated or incurred.

MUNICIPAL CORPORATIONS; POLICE; UNANTICIPATED GRATUITY
FROM PRIVATE INDIVIDUAL; REWARD

A gratuity paid a police officer by a private individual for services rendered in the performance of his official duties is not precluded for being a reward nor for being contrary to public policy.

MUNICIPAL CORPORATIONS; PRISONERS; LIABILITY FOR
COST OF MAINTAINING

23 May 1956

The Supreme Court of this State, in the case of BOARD OF EDUCATION v. HENDERSON, 126 N. C. 689, held that there is no liability on the part of a municipality to provide room and board and other costs in connection with the upkeep of prisoners. The Court held in this case that this is a liability of the county.

MUNICIPAL CORPORATIONS; PRISONERS; LIABILITY FOR COST OF MAINTAINING

21 July 1955

There is no requirement that municipalities operate a city jail; however, they are authorized to do so under G. S. 160-2(10). Our Supreme Court, in the case of BOARD OF EDUCATION v. HENDERSON, 126 N. C. 689, held that there is no liability on the part of a municipality to provide room and board and other costs in connection with the upkeep of prisoners. The Court held in this case that this is a liability of the county.

MUNICIPAL CORPORATIONS; PRIVATE ALLEYS

2 February 1955

A municipality may in a reasonable exercise of the police power regulate parking in or other obstruction of a private alley, and such reasonable regulation may be made applicable to the owner of the alley.

MUNICIPAL CORPORATIONS; PUBLIC CONTRACTS; COMPETITIVE BIDDING

23 December 1954

Where it is found that a special emergency exists involving the health and safety of the people, it is not necessary that a public contract for a municipality be submitted to competitive bidding.

MUNICIPAL CORPORATIONS; PUBLIC CONTRACTS; CONSTRUCTION
COSTING LESS THAN \$15,000.00

13 January 1955

A town may construct a water reservoir on force account, provided the total cost thereof does not exceed \$15,000.00. See G. S. 143-135.

MUNICIPAL CORPORATIONS; PUBLIC CONTRACTS; INTEREST OF
COMMISSIONER; NEWSPAPER ADVERTISING

9 August 1955

A city may not contract to place newspaper advertising in a newspaper published by a corporation, one of the stockholders of which is a Commissioner of the City.

MUNICIPAL CORPORATION; PUBLIC CONTRACT; PURCHASE
OF MOTOR VEHICLE INVOLVING TRADE-IN

7 November 1955

A town purchases a new police patrol automobile on which it trades in its present used vehicle and in addition makes a cash payment of less than \$1,000; under G. S. 143-129 the governing body of a city or town in making a purchase requiring an expenditure equal to or more than \$1,000 must comply with procedures for advertising and letting public contracts except in cases of special emergency; where the total purchase price of a new vehicle is in excess of \$1,000, which is met by a cash outlay of less than \$1,000 plus the trade-in value of a used vehicle, such transaction does amount to a purchase "requiring an estimated expenditure equal to or more than \$1,000" and comes within the meaning of G. S. 143-129 requiring compliance with advertising and bid procedures.

MUNICIPAL CORPORATIONS; PUBLIC PURPOSE; ADVERTISEMENT
OF MUNICIPAL FACILITIES

9 April 1956

Whether the spending of money by a municipality to advertise municipal facilities so as to attract industry would be a public purpose is a question that cannot be answered definitely in view of existing Court decisions.

MUNICIPAL CORPORATIONS; RAILROADS; USE OF STREETS;
MUNICIPAL ORDINANCES

25 April 1955

Municipalities have a right to regulate the use of streets for loading and unloading freight cars within the municipality.

MUNICIPAL CORPORATIONS; RECREATION ACTIVITIES

19 September 1955

Under the provisions of the Charter of the City of Charlotte, the Charlotte Park and Recreation Commission may under certain circumstances and conditions purchase real property and provide for deferred payments, but purchase of personal property with provisions for deferred payments is not authorized. The Commission is authorized by the Charter to lease personal property for necessary recreational purposes.

MUNICIPAL CORPORATIONS; SALE OF DISTRIBUTION SYSTEM

22 May 1956

A municipality can sell, without a vote of the people, but at public auction, utilities (electric system, water works, etc.) erected by it pursuant to G. S. 160-255, which are not needed to serve the citizens residing within the community, and G. S. 160-2(6) does not apply to situations of this kind. The sale must be at public auction. G. S. 160-59.

MUNICIPAL CORPORATIONS; SALE OF POWER PLANT; VOTE OF PEOPLE

13 October 1954

Notwithstanding a provision in a municipal charter authorizing it to acquire and sell real and personal property, the sale of a municipal utility must be authorized by vote of the people, as required by G. S. 160-2(6).

MUNICIPAL CORPORATIONS; SCHOOLS; AUTHORITY TO CHARGE
WATER RENT TO SCHOOLS

3 October 1955

In the absence of a statutory or contractual provision to the contrary, it is thought that a municipality has authority to charge water rent for water furnished to the public schools. G. S. 160-256, Subsection 3, Section 1(A), Article 9, Chapter 1372, Session Laws of 1955. RALEIGH v. PUBLIC SCHOOL SYSTEM, 223 N. C. 316.

MUNICIPAL CORPORATIONS; SCHOOLS; AUTHORITY TO EMPLOY
ADDITIONAL TEACHERS

8 June 1956

Since a municipality and an administrative school unit are separate and distinct entities, it is thought that, in the absence of express statutory authority, a municipality in this State does not have authority to use municipal funds for the employment of additional teachers in the public schools. G. S. 115-80 and G. S. 160-1.

MUNICIPAL CORPORATIONS; STREETS; EXPENDITURE FOR MAINTENANCE IN
CEMETERY OUTSIDE CORPORATE LIMITS

6 October 1954

In view of the express provision of G. S. 136-41.3 requiring the expenditure of Powell Bill funds for street paving to be for streets "within the corporate limits of the municipality," a municipality may not use Powell Bill funds for the maintenance of a street located outside the corporate limits of the municipality even though the street is within a cemetery owned by the municipality.

MUNICIPAL CORPORATIONS; STREETS; LOCAL IMPROVEMENTS

1 July 1954

Because of the express provision of G. S. 136-41.3, requiring the expenditure to be for streets "within the corporate limits of the municipality", it seems very doubtful that a municipality may use Powell Bill funds for the maintenance of a street located outside the corporate limits of the municipality even though that street is within a cemetery owned by the municipality.

MUNICIPAL CORPORATIONS; STREETS; PAVING ASSESSMENTS

21 July 1954

Under the provisions of G. S. 160-78, G. S. 160-85 and 86, it is doubtful that the cost of acquiring title to a part of the land by condemnation proceedings and the removal of trees from such land can be properly assessed against the owners of abutting property in proceedings for local improvements brought under Article 9, Chapter 160, of the General Statutes. EFIRD v. WINSTON-SALEM, 199 N. C. 33.

MUNICIPAL CORPORATIONS; STREETS; PAVING ASSESSMENTS

27 September 1954

The provisions in the charter of the City of Charlotte with regard to the levying of assessments against abutting property and payment of the cost of improvements entirely by a municipality would not restrict the city's right to construct more than one paved street to a public park, school building, etc. The provisions of the general law, G. S. 160-79, make the provisions of that article applicable to all municipalities and not subject to any limitations or restrictions contained in any other public or private laws and would, therefore, be applicable to the City of Charlotte.

MUNICIPAL CORPORATIONS; STREETS; PAVING ASSESSMENTS;
OWNERSHIP OF STREET

20 July 1954

Under the language of G. S. 160-78 and the decision of the Supreme Court in the case of EFIRD v. WINSTON-SALEM, 199 N. C. 33, it seems to me very doubtful that a municipality has the authority to expend public funds for paving a driveway leading to a public school when the driveway is owned by the County Board of Education and is not a "public street or alley" within the contemplation of G. S. 160-78.

MUNICIPAL CORPORATIONS; STREETS; SPECIAL ASSESSMENTS

8 September 1955

When a municipality, after a certain street has been incorporated in the State Highway system, proceeds to pave said street and make assessments with respect thereto pursuant to a petition therefor filed before incorporation of such street into the highway system, the assessments are valid. If the State Highway Commission should find it proper to reimburse the municipality for part of such paving expense, the assessments should be reduced *pro tanto*.

MUNICIPAL CORPORATIONS; STREETS; STOP SIGNS

6 August 1954

The mere fact that the State Highway Department maintains a street within a city does not deprive the city authorities of power to require vehicles travelling along that street to be brought to a full stop before crossing or entering another intersecting street.

MUNICIPAL CORPORATIONS; STREETS; USE OF FUNDS TO PAY
COST OF RELOCATION OF UTILITY LINES

11 May 1956

Powell Bill funds may not be used to pay the cost of relocation of utility lines necessitated by the construction requirements of new streets or the relocation or widening of old streets.

MUNICIPAL CORPORATIONS; TAXATION; AUTHORITY OF MUNICIPALITY TO
REQUIRE PURCHASE OF CITY MOTOR VEHICLE "TAGS"
FOR SCHOOL-OWNED VEHICLES

8 March 1956

A municipality is prohibited, by G. S. 115-128, from taxing motor vehicles which are owned by county or by city Boards of Education.

MUNICIPAL CORPORATIONS; TAXICABS; LIABILITY INSURANCE

11 October 1954

Municipalities are required by G. S. 20-280 to demand proof of financial responsibility of taxicabs operated within the city. The municipality officials are probably not personally liable for their failure to do so.

MUNICIPAL CORPORATIONS; TAXICABS; RIGHT TO LIMIT NUMBER

23 November 1954

A municipal corporation has the right to limit the number of taxicabs which may be operated within its corporate limits. A municipal corporation has the authority to fix and regulate fees of taxicab operators who operate from points of origin within the town limits to points of destination without the town limits for a distance of five miles.

MUNICIPAL CORPORATIONS; TORT LIABILITY; FIGHTING
FIRES OUTSIDE CORPORATE LIMITS

5 August 1955

There is no tort liability on the part of a municipality for damages resulting from the absence of a municipal fire department from its municipality while engaged in fighting fires outside the limits of such municipality.

In the performance of governmental duties involving the exercise of judgment and discretion, a public official is clothed with immunity for mere

negligence and may be held liable only if his act or failure to act is corrupt or malicious or if he acts beyond the scope of his duties. See *SMITH v. HEFNER*, 235 N. C. 1; *BETTS v. JONES*, 203 N. C. 590.

MUNICIPAL CORPORATIONS; TORT LIABILITY; INJURY TO THIRD PERSON
BY POLICE

14 November 1955

Under the provisions of Article 15-A, Chapter 160 of the General Statutes, it is thought that a municipal corporation is authorized to carry liability insurance on individual automobiles owned by police officers when such officers are paid a sum of money for the use of their individual automobiles while being used in the performance of their law enforcement duties; and that by carrying insurance, the municipality waives its governmental immunity to the extent of the insurance carried. Of course the municipality should be careful to see to it that the policy is so worded as to protect both the police officer and the municipality to the extent of insurance carried. *PARKS v. PRINCETON*, 217 N. C. 361; and *STEPHENSON v. RALEIGH*, 232 N. C. 42.

MUNICIPAL CORPORATIONS; USE OF TOWN-OWNED EQUIPMENT
ON PRIVATE PROPERTY

12 May 1955

There is no authority for a town to authorize the use of its equipment on private property. It is suggested that, even if the use of town-owned equipment for private purposes is done under contract with the private property owner, this would not be in the public interest and would be against public policy.

MUNICIPAL CORPORATIONS; UTILITIES; CONTRACT FOR INDUSTRY

25 February 1955

A municipality entering into a contract to furnish water and sewerage, contemplating construction of additional facilities at some time in the future, covering a thirty-year period, should secure special Act of the Legislature authorizing this, although the contract might otherwise be valid.

MUNICIPALITIES; UTILITIES; SALE OF LIGHTING SYSTEM

8 July 1954

A municipality may sell its electric light system if approved and authorized by majority vote of the electors of the municipality. G. S. 160-2(6). Funds derived from the sale of such plant may be used for street and sidewalk improvement within the municipality.

MUNICIPAL CORPORATIONS; UTILITIES; TELEPHONE POLES

2 August 1954

A municipality can legally require telephone companies and power companies at their own expense to remove and relocate telephone and power poles when necessary in a street widening program.

MUNICIPAL CORPORATIONS; UTILITIES; USE OF POLES WITH
TELEPHONE COMPANY

11 October 1954

Municipalities are not prohibited by law from entering into contract with the telephone company for the joint use of telephone poles serving the municipality.

MUNICIPAL CORPORATIONS; UTILITIES; WATER AND SEWER SYSTEMS; RATES

3 April 1956

There is no provision of law which would require a city or town to pay interest on deposits required to be made by persons purchasing water from the town water and sewer service.

MUNICIPAL CORPORATIONS; UTILITY BILLS; WATER BILLS; GAS BILLS; LIGHT
BILLS; AUTHORITY TO CUT OFF FOR NONPAYMENT OF BILLS

19 January 1956

In view of the provisions of G. S. 160-256, a town may not turn off all three utilities, such as gas, lights and water, furnished a customer merely because of the nonpayment of the water bill.

MUNICIPAL CORPORATIONS; UTILITIES; WATER OUTSIDE OF CITY

25 January 1955

A city which operates a water system may supply water to persons outside the city. In doing so, it acts in a proprietary capacity. Its rates are fixed by contract in the discretion of its governing board and are not subject to control by the Utilities Commission. It may not charge different rates for the same quantity of water to persons similarly situated, but may make a distinction in rates between persons inside the city and outside the city. It may purchase a water main from a person outside the city and pay for it with water at the water rates so established. If it contracts to supply

such person with water at "the same rate charged other customers using a similar quantity of water", this means other customers both inside and outside the city.

MUNICIPAL CORPORATIONS; VACANCY IN OFFICE OF COMMISSIONER

7 June 1955

A vacancy in the office of town commissioner may be filled by the remaining commissioners. This is the general law. See G. S. 160-8.

MUNICIPAL CORPORATIONS; VACATION LEAVE; PAYMENT FOR UNUSED VACATION

9 September 1955

When a municipality has not made a practice of paying employees for unused vacation leave, such municipality may not upon the retirement of a particular employee retroactively pay such employee for unused vacation leave over a period of years.

MUNICIPAL CORPORATIONS; WATER; CONTRACTS; SERVICE BEYOND CITY LIMITS

26 January 1955

A contract between a city and persons residing outside of the city whereby the city acquires a water line and agrees to supply such persons with water at specified rates is a valid contract. The city is not required to serve all persons outside of the city at the same rates.

MUNICIPAL CORPORATIONS; WATER RATES OUTSIDE THE CORPORATE LIMITS

19 August 1954

A municipality may fix a different water rate from that charged within the corporate limits for water supplied outside the corporate limits.

The State of North Carolina has no authority to audit the books of a municipal corporation.

MUNICIPAL CORPORATIONS; WATER SYSTEM; FURNISHING OUTSIDE CUSTOMERS

16 September 1954

A municipality may furnish water and electricity to an industry located out of the town when such service is available, and make charges for such

services at rates different from the rates fixed within the municipality. G. S. 160-255 and G. S. 160-256.

MUNICIPAL CORPORATIONS; ZONING; EXCLUSION OF
GARAGES AND FILLING STATIONS

25 August 1954

A zoning ordinance which is a part of a comprehensive zoning plan which restricts and prohibits location of garages and filling stations within a designated district is constitutional.

MUNICIPAL CORPORATIONS; ZONING COMMISSION; PUBLIC OFFICERS

25 March 1955

Members of a municipal zoning commission are not considered public officers within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and it is not necessary that membership on the commission be confined to residents of the municipality concerned.

MUNICIPAL CORPORATIONS; ZONING ORDINANCES; APPLICABILITY TO
CONSTRUCTION OF CITY AUDITORIUM

7 October 1955

The provisions of G. S. 160-181.1 apply to municipalities and a city may not since its enactment violate their own zoning regulations.

MUNICIPAL OFFICERS; ELIGIBILITY TO HOLD OFFICE;
RESIDENCE REQUIREMENTS

19 March 1956

In order for a person to be eligible to hold a municipal office, he must be a qualified elector of the municipality in which he desires to hold public office. In order to be a qualified elector of a municipality, a person must be a resident therein.

NATIONAL GUARD ARMORIES; OWNERSHIP; JURISDICTION OF
MUNICIPAL POLICE

27 September 1954

Municipal police have jurisdiction to enforce law and order in and around the premises of armories constructed by the State to the same extent as they are authorized to perform such duties in and around other public buildings.

NUDIST CAMPS

2 May 1955

Nudist camps may not be legally operated in North Carolina.

(1) OFFICERS; FEES FOR SUBPOENAING WITNESS; OFFICER
WHO IS HIMSELF A WITNESS

(2) OFFICER PROVING ATTENDANCE IN MORE THAN ONE CASE

28 March 1956

There is no authority for an officer to subpoena himself as a witness in a criminal or civil action and collect a fee therefor.

No witness summoned in a criminal action or proceeding shall be paid by the county for attendance in more than one case for any one day.

OUT-OF-STATE TUITION AND TRAVEL ALLOWANCE FOR STUDENTS
ATTENDING INSTITUTIONS IN FOREIGN COUNTRIES

20 January 1955

The tuition and travel allowances under G. S. 116-100 are not available for students who attend an educational institution outside the continental United States.

PHYSICAL THERAPY; STATE EXAMINING COMMITTEE LICENSED
UNDER REVENUE ACT

5 June 1956

The mere fact that a person has paid the state privilege license tax to practice physical therapy does not authorize such person to represent herself as a physical therapist in violation of the specific statutes regulating the practice of physical therapists as set out in Sections 90-256 et seq. of the General Statutes of North Carolina.

PHYSICIANS AND SURGEONS; LIABILITY FOR DAMAGES FOR
MALPRACTICE; TORTS

4 August 1955

The mere fact that a person is not licensed to practice medicine in North Carolina would not, in itself, be evidence of negligence in a malpractice case; and a person unlicensed to practice medicine in this State, but who

attempts to do so, is required to exercise the care and have that degree of knowledge and skill ordinarily possessed by others of his profession. Otherwise, such a person would be subject to a suit for damages for his tortious acts.

PLUMBING AND HEATING CONTRACTORS; COUNTY REGULATIONS; PERMITS

21 June 1956

A county board of health may not adopt an ordinance which would permit an unlicensed person to install a plumbing system where such person would be required to have a license by State law. The county may require compliance with the State law as a condition for the issuance of a permit.

POWELL BILL; CEMETERY STREETS

14 February 1955

It is doubtful that cemetery streets in a municipal cemetery could be classified as public roads within the meaning of the Powell Bill Act. In any event, they would have to be at least sixteen feet wide and open to the general public for highway purposes before being considered as eligible for Powell Bill funds.

POWELL BILL; COMMITTING FUTURE REVENUES

3 March 1955

Powell Bill funds may be committed for those funds presently on hand and those which may be received in the current year in making contracts with the State Highway and Public Works Commission for the performance of the work to be done thereby on the streets of a municipality.

POWELL BILL; CONSTRUCTION OF PIPELINE FOR DRAINAGE OF STREETS

23 April 1956

Where it is necessary to construct pipelines for the proper drainage of streets and for their protection, Powell Bill funds may be used for this purpose.

POWELL BILL; GENERAL

7 July 1955

Before Powell Bill funds may be expended on its streets by a municipality, the street must be located within the municipality, must be open to use

by the general public, and must have an average width of not less than sixteen (16) feet. Such funds may be expended by municipalities only for the purpose of maintaining, repairing, constructing, reconstructing or widening any street or public thoroughfare, including bridges, drainage, curb and gutter, and other necessary appurtenances, within the corporate limits of the municipality, or for meeting the municipality's proportionate share of assessments levied for such purposes.

POWELL BILL; INSTALLATION OF STREET LIGHTING SYSTEM

11 July 1955

Powell Bill funds may not be expended for the installation of a system of street lighting in a municipality.

POWELL BILL; MOVING WATER METERS AND FIRE HYDRANTS

19 October 1955

The removal of water meters and fire hydrants as a part of a program of widening and improving streets in a municipality is an expense of the municipality which could be properly paid for from Powell Bill funds.

POWELL BILL; RIGHT-OF-WAY

17 December 1954

Powell Bill funds may not be used for the purpose of right-of-way for an alley back of stores for the purpose of principally serving the use of such stores. To condemn an alley way back of stores, it would be necessary that it be done in the public interest and not for the primary benefit of the abutting owners.

POWELL BILL; RIGHT-OF-WAY FOR STATE HIGHWAY; RELOCATION OF UTILITIES

10 November 1955

Powell Bill funds may be used for the purpose of paying one-third of the cost of the acquisition of the right-of-way and for the construction of a bypass which is a part of the State Highway System which passes through the town.

It is extremely doubtful if Powell Bill funds may be used for the relocation of utilities. It is not thought that the relocation of utilities constitutes a necessary appurtenance to a street or highway within the meaning of the statute.

POWELL BILL; STREET CONSTRUCTION

26 October 1955

A town may use Powell Bill funds to pay its portion of the cost of street construction under an agreement with the State Highway and Public Works Commission entered into prior to the enactment of the Powell Act.

POWELL BILL; STREET PARTLY OUTSIDE OF MUNICIPALITY

20 May 1955

Whether or not a municipality can use Powell Bill funds for a street, one-half of which lies outside of the corporate limits, but which is open and maintained as a street by the municipality, may depend upon the source of title of the municipality to the street and authority to acquire and maintain it. Further information is required in this respect.

POWELL BILL; STREET SWEEPER

17 March 1955

Powell Bill funds may not be used to purchase a street sweeper.

POWELL BILL; SURFACING PROPOSED STREET

1 September 1955

Powell Bill funds may not be used to pay the cost of surfacing a proposed street which has not been dedicated as such and is not open to use by the general public.

POWELL BILL; SURVEYING STREETS

8 December 1955

If a municipality obtains information from a survey of its streets not only for qualifying for Powell Bill allocations but also to be used as basic engineering data to assist it in the proper expenditure of these funds for maintenance or construction of its streets, the expenditure for a survey would be a legitimate charge against Powell Bill funds.

POWELL BILL; TILING DITCHES

1 September 1954

Powell Bill funds may be expended for tiling ditches at intersections of municipal streets and providing catch basins for drainage purposes.

POWELL BILL; UNINCORPORATED MUNICIPALITIES

5 July 1955

Unincorporated communities annexed to an incorporated municipality since the last Federal Decennial Census cannot be considered as to the population factor in the distribution of Powell Bill funds. The increased mileage of public streets not connected with the State Highway and Public Works System can, however, be considered if the data is certified to the Highway Commission and approved.

POWELL BILL; WIDENING STREETS; CONSTRUCTION OF SIDEWALKS

6 June 1955

It is doubtful that Powell Bill funds can be used for construction of sidewalks and retaining walls incidental to the widening of a street in a municipality.

POWELL BILL; WIDENING STREETS CONSTITUTING PART OF STATE HIGHWAY

28 November 1955

It is made the duty of a municipality to contribute one-third of the cost of widening or relocating streets constituting part of the highway system. G. S. 136-41.1. Powell Bill money can be used for this purpose, but a county has no authority to appropriate money and donate it to a municipality for this purpose.

POWELL BILL; WIDTH OF STREETS; LANES

6 April 1955

Under the Powell Bill, double streets with intervening space cannot be counted as two streets.

PRIVATE DETECTIVES; CARRYING WEAPONS; RUNNING COLLECTION AGENCY;
LICENSE TAX

19 January 1955

In order to engage in the business of being a private detective in this State, a person must pay to the Commissioner of Revenue, Raleigh, North Carolina, an annual license tax in the amount of \$25.00.

Private detectives are not permitted to engage in the business of a Collection agency. Private detectives are not permitted to go armed in a body. There is no provision for a private detective to secure a State or county

license to carry a pistol. A private detective does not have the power of arrest nor may such private detective carry a weapon concealed about his person.

PROPERTY; REMOVAL FROM BUILDING PURSUANT TO
EJECTMENT PROCEEDING; ABANDONMENT

10 August 1954

When the Sheriff of a county removes property from a building pursuant to a judgment and execution issued in an ejectment proceeding and the person ejected has not been seen in the county for six months and his whereabouts is unknown, then, in such event, the Sheriff may dispose of the property under the provisions of Article 2 of Chapter 15 of the General Statutes, being Sections 15-11 through 15-17.

PUBLIC CONTRACTS; APPLICATION OF G. S. 143-129 TO MANUFACTURERS;
PERFORMANCE BOND

24 September 1954

It is thought that G. S. 143-129 applies equally to manufacturers of electrical equipment and to contractors bidding on the furnishing and installation of such equipment.

The statute expressly requires the person to whom the contract is awarded to give bond for the faithful performance of the contract and in the full amount of the contract.

Our courts hold that an express contract entered into in violation of the terms of the statute is *ultra vires* and void, but that a recovery can be had on *quantum meruit* for benefits actually received. *RAYNOR v. COMMISSIONERS OF LOUISBURG*, 220 N. C. 348; *MULLEN v. LOUISBURG*, 225 N. C. 53 and *HAWKINS v. DALLAS*, 229 N. C. 561.

PUBLIC CONTRACTS; AWARDED CONTRACT

3 September 1954

The City Council rather than the City Manager under Plan D form of government must make the award of public contracts under the provisions of GS 143-129.

PUBLIC CONTRACTS; BID BONDS

5 January 1956

Where there has been an obvious mistake of a low bidder on a public contract, the public agency letting the contract may, upon finding such to be a fact, release the low bidder and return his bid bond.

PUBLIC HEALTH; COUNTY BOARD OF HEALTH; PRACTICE OF MIDWIFERY;
AUTHORITY TO ADOPT RULES AND REGULATIONS

7 March 1956

Under the provisions of G. S. 90-176 through 90-178 a county board of commissioners may remove the county from the coverage of said sections relating to the practice of midwifery, and the county board of health may adopt a county ordinance regulating such practice.

PUBLIC HOLIDAYS; TIME OF MEETINGS OF COUNTY COMMISSIONERS

30 August 1955

In the case of *LATTA v. ELECTRIC COMPANY*, 146 N. C. 285, 308, our Supreme Court held that public holidays designated by G. S. 103-4 are legal holidays. If the time for a regular meeting of a board of county commissioners on the first Monday in a month falls on a holiday designated in G. S. 103-4, such meeting may be held on the following Tuesday.

PUBLIC OFFICERS; CITY COUNCIL

11 May 1955

A person, to hold office, must be a registered voter in the municipality in which the office is held, but a person who has received the highest number of votes and is elected to an office and serves therein would be a *de facto* officer although he has not been registered and the acts of such person as a member of the Board would be valid. G. S. 128-6.

PUBLIC OFFICERS; CLERK OF THE SUPERIOR COURT; ADVANCE COSTS
IN SPECIAL PROCEEDINGS

2 May 1955

G. S. 2-29, requiring advance costs in suits, does not apply to all special proceedings, but an officer has a right to demand the payment in advance in a case in which this is demanded.

PUBLIC OFFICERS; CLERK OF THE SUPERIOR COURT; ASSISTANT CLERK;
AUTHORITY TO ACT AS JUDGE OF THE JUVENILE COURT

5 May 1955

Construing together the provisions of G. S. 2-10 and G. S. 110-22, it is thought that an Assistant Clerk of the Superior Court has the authority to perform the duties of Judge of the Juvenile Court of the County. *IN RE BARKER*, 210 N. C. 617.

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT: ASSISTANT CLERK; POWERS**9 April 1956**

Under the express provisions of Section 2-10 of the North Carolina General Statutes an Assistant Clerk of the Superior Court is fully authorized and empowered to perform all the duties and functions of the office of the Clerk of the Superior Court.

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT; ASSISTANT CLERKS AND DEPUTY CLERKS; PROBATE POWERS**21 May 1956**

When a deed is offered for probate the clerk or assistant clerk or deputy clerk taking the proof of acknowledgment and ordering the registration should sign the certificate in his own name designating himself as clerk or assistant clerk or deputy clerk as the case may be.

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT; BANK DEPOSITS IN THIS STATE; ANCILLARY ADMINISTRATION**14 May 1956**

A foreign administrator of the estate of a deceased person has no authority in this State and where such deceased person had funds on deposit in this State or debts due him by citizens of this State, an ancillary administrator should be appointed.

PUBLIC OFFICERS; CLERKS OF COURT; DEPUTY CLERK; AUTHORITY TO CERTIFY AND AUTHENTICATE RECORDS**6 September 1955**

Certification by the Deputy Clerk of records in the custody of the Clerk of the Superior Court is sufficient to permit the records to be admitted in evidence in a court of this State. While it is not entirely clear, certification by a Deputy Clerk is probably not sufficient to comply with 28 USCA, Section 1738, governing the admission in evidence of records of another state. Of course, the particular state may have a statute permitting such records to be admitted.

PUBLIC OFFICERS; CLERK SUPERIOR COURT; DEPUTY CLERK; ELIGIBILITY OF
NONRESIDENT TO HOLD OFFICE

12 January 1955

A nonresident of this State is not eligible to serve as a deputy clerk of the superior court.

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT; DOCKETING OF JUDGMENTS
RENDERED BY MUNICIPAL-COUNTY COURT OF GREENSBORO

2 May 1956

Under the provisions of Chapter 971 of the Session Laws of 1955, it is proper for a clerk of the superior court of another county to docket transcripts of judgments rendered by the Municipal-County Court of Greensboro.

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT; FEES

20 April 1956

Clerks of Superior Court are entitled to a commission of 3 per cent on all sums of money not exceeding \$500.00 placed in their hands by virtue of their office except on judgments, decrees and executions, and deposits of excess proceeds of mortgage sales, and a commission of 1 per cent upon the excess of such sums over \$500.00.

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT; FEES

24 October 1955

I am of the opinion that Chapter 879 of the Session Laws of 1955, which amends the fee bill of the Clerks of the Superior Court as set out in G. S. 2-26, applies only where services are being rendered by the Clerk for out-of-county parties.

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT; FEES AND COMMISSIONS;
RIGHT OF SALARIED CLERK TO RETAIN FEES

29 June 1956

Salaried clerks of the Superior Court are entitled to retain for their own use the fees provided by G. S. 105-22 for making out inheritance tax reports and the commissions provided in G. S. 105-93 in connection with remitting to the Department of Revenue process tax.

PUBLIC OFFICERS; CLERKS OF COURT; GUARDIANSHIP; LEGACIES

3 May 1956

Chapter 1061 of the Session Laws of 1955 relates only to gifts *inter vivos* and does not authorize an executor of an estate to turn over cash legacies to the parents of minor legatees.

PUBLIC OFFICERS; CLERK OF THE SUPERIOR COURT; INVESTMENTS

9 December 1954

It is doubted that the clerk of the superior court can loan on trust funds secured by church property, as the statute, G. S. 2-55(a), limits loans to fifty per cent (50%) of the assessed tax values.

PUBLIC OFFICERS; CLERK OF SUPERIOR COURT; TRUST FUNDS

31 January 1955

When a Clerk of the Superior Court has received money in trust for a minor child, the Clerk may pay the money over to the child when the Clerk has proof of the child's having attained the age of 21 years without requiring the child to appear personally before the Clerk and signing a receipt in the Records of Amounts Paid for Indigent Children. A receipt should be obtained from a child and recorded in such book.

PUBLIC OFFICERS; COMMISSIONER OF WRECKS

18 October 1954

Commissioner of Wrecks is entitled to commission of 2½% on cargo of a wrecked vessel when he has taken possession of it by consent of the master when the master or owner removes the property from his custody. If the Commissioner has not taken possession by consent of the master, he would not be entitled to commission.

PUBLIC OFFICERS; CONSTABLES; FEES

31 August 1954

Constables are allowed the same fees as sheriffs. See G. S. 151-4.

In the absence of a local act to the contrary, arrest fees of ABC officers should be paid into the general fund of the county where collected.

PUBLIC OFFICERS; CONSTABLES; JURISDICTION

14 January 1955

A township constable has authority to make arrests anywhere within the limits of the county in which he was elected. See *STATE v. CORPENING*, 207 N. C. 805.

PUBLIC OFFICERS; CONSTABLES; JURISDICTION

12 April 1955

A constable may make an arrest anywhere within the limits of the county within which he is appointed. See *STATE v. CORPENING*, 207 N. C. 805.

PUBLIC OFFICERS; CONSTABLES; RESIDENCE REQUIREMENTS

3 November 1955

A township constable does not vacate his office by temporarily removing himself from his township with the intention of returning thereto in the near future.

PUBLIC OFFICERS; CONSTABLES; VACANCIES IN OFFICE

16 January 1956

A person elected to the office of constable does not hold over after term until his successor is elected and qualified. *STATE v. McLURE*, 84 N. C. 153.

PUBLIC OFFICERS; CORONERS; APPOINTMENT

29 July 1955

The constitutional prohibition against double office holding would not prevent the clerk appointing another public officer to act as coroner in a special case within the meaning of the statute; neither would the constitutional prohibition against double office holding apply to persons appointed in such cases. The person so appointed would be considered a commissioner for a special purpose within the meaning of Article XIV, Section 7, of the Constitution.

Should a person die without medical attention under the circumstances set forth in G. S. 130-80 and a vacancy exists in the office of the coroner,

the clerk should appoint a coroner for such special case to make the investigation and certificate of death as required by this statute.

A special coroner appointed under the last paragraph of G. S. 152-1 would not be required to give the bond prescribed by G. S. 152-2 for the office of county coroner.

It is the duty of the board of county commissioners of a county to fill the office of coroner when the same becomes vacant, but, when it fails to do so, the vacancy continues, and it is the duty of the clerk to appoint some suitable person to act as coroner in each special case that may be brought to his attention.

PUBLIC OFFICERS; CORONERS; DUTIES AND POWERS

25 January 1955

The coroner's jurisdiction is confined to those cases where it appears that the deceased probably came to his death by the criminal act or default of some person.

PUBLIC OFFICERS; CORONERS; JURISDICTION

17 August 1955

The jurisdiction of the coroner is restricted to cases where it appears that the deceased probably came to his death by the criminal act or default of some person, and his right to perform an autopsy is further limited to cases where a coroner or a majority of a coroner's jury determine it necessary upon an inquest to have such an autopsy.

PUBLIC OFFICERS; CORONER; RIGHT TO REQUEST AUTOPSY

19 October 1954

When a coroner has reasonable grounds to believe that the death of a person has resulted from some criminal act and has summoned a jury and is holding an inquest, either the coroner or a majority of the members of the jury may request and have an autopsy performed; it is not believed that this authority exists in the coroner himself aside from the jury of inquest being assembled.

PUBLIC OFFICERS; CORONER; SIGNING DEATH CERTIFICATES

14 October 1954

Under G. S. 130-80 it is not the primary duty of the Coroner to sign death certificates where people die from natural causes, heart failure or other illnesses, but it is the function of the Local Health Officer to issue

these death certificates, unless there is no Local Health Officer or person acting as such Health Officer.

PUBLIC OFFICERS; CORONERS; VACANCIES

30 May 1956

Appointments to fill vacancies in the office of coroner are required to be made for the unexpired term.

PUBLIC OFFICERS; COUNTY TREASURER; APPOINTMENT OF SUBSTITUTE

24 April 1956

Where a county treasurer is hospitalized for a period of several weeks, the Board of County Commissioners may, upon application of the treasurer, grant him a leave of absence and appoint an acting or substitute treasurer to serve in his absence.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; APPOINTMENT

12 December 1955

In spite of the provisions of G. S. 7-115, as rewritten by the 1955 General Assembly, it is thought that the last sentence of G. S. 7-114, and the provisions of Article 4, Section 28 of the State Constitution are applicable to the case of the resignation of a justice of the peace after he has qualified; and that the only official having authority to appoint a successor for the unexpired term is the Clerk of the Superior Court.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; APPOINTMENT

17 January 1955

Chapter 1091 of the Session Laws of 1949 would not have the effect of repealing G. S. 7-113, G. S. 7-114, and G. S. 7-115, unless the act as to the method of appointment of justices of the peace were adopted in the counties in which it could be made applicable.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; AUTHORITY TO
APPOINT GUARDIAN AD LITEM

29 August 1955

Reasoning by analogy from what our Supreme Court said in the case of *HOUSER v. BONSALE & CO.*, 149 N. C. 51, it is thought that a justice

of the peace has authority to appoint a guardian ad litem to represent an infant defendant in an action pending in his court. G. S. 1-65 and G. S. 7-149 (Rule 16).

**PUBLIC OFFICERS; JUSTICES OF THE PEACE; BAIL; COLLECTION
AGENCY LICENSE TAX**

12 December 1955

It is improper for a Justice of the Peace to execute a bail bond in cases in which the warrant was issued by or returnable to his court.

A Justice of the Peace who acts as a collecting agent is subject to the license tax upon collecting agencies imposed by G. S. 105-45.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; COLLECTION AGENCY

8 August 1955

It would be difficult for a justice of the peace to operate a collecting agency and also carry out the duties of a justice of the peace where he is required to pass upon issues as a disinterested court.

G. S. 14-245 makes it a misdemeanor for a justice of the peace to solicit official business or patronage for his office, and it would be difficult to conduct a collection business without falling into a violation of this statute. If a justice of the peace conducts a collection agency and also acts as a justice of the peace, he would not be warranted or authorized to institute cases before himself for the collection of claims, since he would have an interest in these collections.

**PUBLIC OFFICERS; JUSTICES OF THE PEACE; CONSTABLES;
PERFORMANCE OF DUTIES**

4 June 1956

A constable has countywide jurisdiction to exercise the powers of his office.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; EXPIRATION OF TERM

25 July 1955

When the term of a Justice of the Peace terminates and no successor is appointed, criminal matters pending before him in which no preliminary hearing has been had abate and a new proceeding may be instituted by another Justice of the Peace.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; FEES

30 May 1955

It is thought that under the provisions of G. S. 7-236, a justice of the peace who issues a warrant returnable before a county recorder's court is

entitled to the same fees as if he made the warrant returnable before himself.

Under the provisions of G. S. 6-36 if a defendant is acquitted in a criminal case, or if he is convicted and unable to pay the costs, the county is liable for one-half the costs when audited and allowed by the county commissioners.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; FEES

16 July 1954

A justice of the peace appointed by the Governor, who serves only as a desk sergeant and who is on a salary basis, would not be entitled to fees for issuing warrants and fixing bonds in criminal cases. The appropriate fees for these services should be taxed in the bill of costs and, when collected, should be paid into the city treasury.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JURISDICTION; CIVIL CASES

3 December 1954

Justices of the peace have exclusive original jurisdiction of all civil actions founded on contract, except where the sum demanded, exclusive of interest, exceeds \$200.00, and where the title to real estate is in controversy.

Justices of the peace have concurrent jurisdiction of civil actions not founded on contract, where the value of the property in controversy does not exceed \$50.00.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JURISDICTION; CLAIM AND DELIVERY

8 July 1954

A justice of the peace has jurisdiction in a claim and delivery proceeding only when the value of the property in controversy does not exceed \$50.00. If the action is by a mortgagee to recover possession of mortgaged property for the purpose of foreclosure, a justice of the peace has jurisdiction of the contract part of the action when the sum demanded exclusive of interest and court costs does not exceed \$200. North Carolina Constitution, Article IV, Section 27; G. S. 7-122; *KISER v. BLANTON*, 123 N. C. 400; *MARTIN v. McNEELY*, 101 N. C. 634; *GRIFFITH v. RICHMOND*, 126 N. C. 377; *NOVILLE v. DEW*, 94 N. C. 43 and *HARGROVE v. HARRIS*, 116 N. C. 418.

If a judgment is entered for the amount of the debt secured by a mortgage and the ancillary remedy of claim and delivery is disregarded, the mortgagee does not lose his lien against the property until the money judgment is satisfied. *ELLIS v. HUSSEY*, 66 N. C. 501; *SILVEY v. AXLEY*, 118 N. C. 959, and *BROWN v. TURNER*, 202 N. C. 227.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JURISDICTION; CLAIM
AND DELIVERY

8 July 1954

A justice of the peace has jurisdiction in a claim and delivery proceeding only when the value of the property in controversy does not exceed \$50.00. If the action is by a mortgagee to recover possession of mortgaged property for the purpose of foreclosure, a justice of the peace has jurisdiction of the contract part of the action when the sum demanded exclusive of interest and court costs does not exceed \$200. North Carolina Constitution, Article IV, Section 27; G. S. 7-122; KISER v. BLANTON, 123 N. C. 400; MARTIN v. McNEELY, 101 N. C. 634; GRIFFITH v. RICHMOND, 126 N. C. 377; NOVILLE v. DEW, 94 N. C. 43 and HARGROVE v. HARRIS, 116 N. C. 418.

When it shows on the face of the affidavit that the justice of peace does not have jurisdiction of the claim and delivery part of the proceeding, it would seem that the sheriff or other officer to whom the process is directed, does not have authority to seize the property and if he refuses to serve the process he will not subject himself to the penalty of \$100 prescribed by G. S. 162-14. WHITFIELD v. JOHNSTON, 23 N. C. 473; STATE v. MANN, 27 N. C. 45 and FENTRESS v. BROWN, 61 N. C. 373.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JURISDICTION; CLAIM AND
DELIVERY; SPLITTING CAUSES OF ACTION

1 December 1954

It is thought that a mortgagee of personal property may elect to sue for the recovery of less than all of the property covered by the mortgage and if the value of the property sought to be recovered does not exceed \$50.00, a justice of the peace has jurisdiction. It is also thought that if the mortgagee elects to sue for the recovery of less than all the property, he may not maintain a later action to recover possession of the balance and an indivisible cause of action may not be divided in order to confer jurisdiction upon a justice of the peace. Article IV, Section 27 of the State Constitution; G. S. 7-122; BOYLE v. ROBBINS, 71 N. C. 130; KISER v. BLANTON, 123 N. C. 400; COPLAND v. TELEGRAPH COMPANY, 136 N. C. 11; NORVELL v. MECKE, 127 N. C. 401.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JURISDICTION; CRIMINAL CASES

24 January 1956

Construing together Sections 27, 12 and 14, of Article IV of the State Constitution, our courts hold that a justice of the peace or some court having concurrent jurisdiction with a justice of the peace has exclusive original jurisdiction of criminal cases arising within their counties where

the punishment prescribed by law does not exceed a fine of \$50.00 or imprisonment for thirty days. G. S. 7-129, G. S. 7-190 and G. S. 7-222. STATE v. WILKES, 233 N. C. 645; STATE v. BASKERVILLE, 141 N. C. 811; STATE v. DOSTER, 157 N. C. 634; STATE v. NORMAN, 237 N. C. 205, and STATE v. JONES, 100 N. C. 438.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JURISDICTION; DEFENDANT
RESIDENT OF ANOTHER COUNTY

14 December 1954

Under G. S. 7-138 a justice of the peace has no authority to issue civil process to any county other than his own unless one or more bona fide defendants shall reside in, and also one or more bona fide defendants shall reside outside of his county.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JURISDICTION;
HOLDING COURT OUTSIDE OF TOWNSHIP

10 November 1954

Under G. S. 7-127, a justice of the peace may issue a summons or other process anywhere in his county, but he is not compelled to try a case out of the township for which he was elected or appointed.

This statute does not contemplate that a justice of the peace elected or appointed for one township could set up his office and perform a large portion of his duties in some other township in the county. This view is supported by the opinion in the case of DAVIS v. SANDERLIN, 119 N. C. 84.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JURISDICTION; MEMBERSHIP
IN ARMED SERVICES

3 January 1955

A justice of the peace may not exercise the authority nor perform the duties of his office outside the corporate limits of the county for which he was appointed or elected.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JURISDICTION; VIOLATION
OF CITY ORDINANCES

12 August 1955

A justice of the peace has jurisdiction to try violations of a city ordinance enacted pursuant to the provisions of G. S. 20-141 (f1).

PUBLIC OFFICERS; JUSTICES OF THE PEACE; MENTALLY INCOMPETENT

6 October 1954

When a justice of the peace has been released from a State hospital for the insane and was never adjudicated insane in a lunacy proceeding under G. S. 35-2, then if someone were to attack an official act of such justice of the peace on the ground that he is mentally incompetent, such person would have to show that the justice of the peace was actually and in fact mentally incompetent at the time of the performance of such official act, and while his commitment to the hospital would probably be evidence as to his mental condition, in all likelihood it would not be binding and conclusive. However, in such case, in order to exercise an abundance of precaution, a justice of the peace in such a situation should have his rights restored according to the terms of G. S. 35-4.1 or G. S. 35-4-2, the applicable section depending upon whether a guardian was named while he was in the hospital.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; OFFICE DOOR

25 August 1954

There is no legal requirement that a justice of the peace have his name posted or printed on his office door.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; POWER TO PUNISH FOR CONTEMPT

20 October 1955

The sessions of county and municipal recorders' courts continue from day to day until all business of the court is transacted by trial, continuance or otherwise. The statutes on this subject contemplate regular weekly terms of court and they provide that, when any case has been finally disposed of by the recorder and judgment pronounced therein, the case shall not thereafter be reopened or the judgment or sentence rendered therein be changed, modified or stricken out by the recorder after the adjournment of the regular weekly term of court or after the adjournment of any special term of court by the recorder. See G. S. 7-188 and G. S. 7-221.

A justice of the peace has the power to punish for contempt any person who curses in his hearing while he is holding court.

Justices of the peace are also authorized to punish for contempt while sitting for the trial of causes or engaged in official business. See G. S. 5-6.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; POWER TO PUNISH FOR CONTEMPT

21 November 1955

G. S. 5-6 expressly authorizes justices of the peace to punish for contempt of court. In the case of *STATE v. HOOKER*, 183 N. C. 763, our

Supreme Court held that a justice of the peace may impose the maximum punishment for contempt fixed by G. S. 5-4 on the ground that a proceeding for contempt is not a criminal action and therefore the justice of the peace is not limited in his punishment to that fixed by Article IV, Section 27 of the State Constitution. G. S. 5-4 would seem to be modified so far as courts of justices of the peace are concerned by the provisions of G. S. 7-128.

Attention is called to the fact that G. S. 5-1 sets out the Acts constituting contempt of court and G. S. 5-8 enumerates the Acts punishable as for contempt. *LUTHER v. LUTHER*, 234 N. C. 429.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; POWER TO PUNISH FOR
CONTEMPT; MAXIMUM PUNISHMENT

14 March 1955

A justice of the peace may punish a person for contempt by fining him not more than \$250.00 or by imprisonment for not more than thirty days, or both, in the discretion of the court.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; POWER TO SUSPEND SENTENCE

16 November 1954

Article 20, Chapter 15 of the General Statutes, dealing with suspension of sentence in criminal cases, would not seem to be applicable to courts of justices of the peace because G. S. 15-197 expressly limits the application of that article to courts of record. However, it is thought that a justice of the peace has the inherent power to suspend sentences upon reasonable terms. *STATE v. SIMMINGTON*, 235 N. C. 612; *STATE v. STALLINGS*, 234 N. C. 265; *STATE v. JACKSON*, 226 N. C. 66; *STATE v. MILLER*, 225 N. C. 213; *STATE v. TRIPP*, 168 N. C. 150; *STATE v. GRIFFIS*, 117 N. C. 709; *STATE v. CROOK*, 115 N. C. 760, and *STATE v. BENNETT*, 20 N. C. 170.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; RECORDS

28 February 1955

While not technically a court of record, a justice of the peace is required to keep civil and criminal dockets. It is thought that these dockets are public records within the contemplation of G. S. 132-1 and are open to public inspection under the provisions of G. S. 132-6. G. S. 7-130, G. S. 7-131 and G. S. 7-132. *WILLIAMS v. BOWLING*, 111 N. C. 295, *SMITH v. PENDER*, 173 N. C. 55, and *HARRIS v. SINGLETARY*, 193 N. C. 583.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; REMOVAL OF CAUSES

21 November 1955

Under G. S. 7-147 a justice of the peace has no authority to require a party seeking to remove a case to another justice of the peace to take oath that he is of the opinion that he would not get a fair and impartial trial before the justice issuing the process. All that is required by statute is a written application for removal. The justice should then enter a written order of removal.

When a case is removed from a justice of the peace under the foregoing statute, he should send all the papers in the case to the justice to whom the case is removed.

The justice issuing the process is entitled to his fees for their issuance and to the removal fee. The justice who actually tries the case is entitled to the remaining fees. *STATE v. IVIE*, 118 N. C. 1227 and *STATE v. WARREN*, 100 N. C. 489.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; REMOVAL OF CAUSES

1 November 1955

Under the provisions of G. S. 7-147, it is thought that no advance notice to the opposite party of intention to request a removal of a cause from one justice of the peace to another is required. *STATE v. IVIE*, 118 N. C. 1227, and *STATE v. WARREN*, 100 N. C. 489.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; RESIDENCE

14 November 1955

A justice of the peace vacates his office if he removes from the township of his election or appointment and remains away over six months.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; RESIDENCE

15 November 1955

A justice of the peace who moves his residence from the township from which he was appointed or elected and remains away for a period of six months automatically vacates his office.

Under the amendment to G. S. 7-115, resident judges of the superior court are authorized to appoint persons to the office of justice of the peace.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; TRIAL BY JUSTICE OF OFFENSE
COMMITTED IN HIS COURT

12 December 1955

When a bad check has been given to a justice of the peace as a cash bail for appearance, it would seem to be a better practice for some different justice of the peace to try the defendant on the charge of giving a bad check.

PUBLIC OFFICERS; JUSTICES OF THE PEACE; VACANCIES; RESIGNATIONS BY
ELECTIVE JUSTICES OF THE PEACE

12 June 1956

Vacancies in the office of elective Justices of the Peace are filled by the Clerk of the Superior Court in which such vacancy occurs. Resignations of elective Justices of the Peace should be addressed to the Clerk of the Superior Court.

PUBLIC OFFICERS; NOTARIES PUBLIC; ALIENS

9 August 1954

A British subject who has not become a naturalized citizen of this Nation is not eligible to hold a commission as a notary public in this State.

PUBLIC OFFICERS; NOTARIES PUBLIC; FEES

1 August 1955

Generally, the practice is for notaries to charge the same fees as are allowed other officers taking probates and acknowledgments of deeds and other instruments. Fees allowed clerks of the superior court are prescribed by G. S. 2-26, and these are the fees which are usually collected by notaries public for taking acknowledgments of deeds, contracts, etc. It is doubted seriously if G. S. 10-8 contemplates that a notary should make a charge for taking the acknowledgment of an instrument based upon the number of words it contains.

PUBLIC OFFICERS; NOTARIES PUBLIC; FEES

6 September 1955

In view of the fact that G. S. 45-3 requires the wife to join in a mortgage on household and kitchen furniture, the notary's fees for the acknowledgment of such mortgages may be collected from the borrower.

When a lender takes a chattel mortgage to secure a loan and does not

do a business covered by insurance, he may charge a notary fee and a recording fee if the lender is going to record the instrument. If the instrument is not going to be recorded, neither a notary fee nor a recording fee may be charged.

If a lender does a non-recording business covered by insurance, he may charge a notary fee to get a mortgage ready for recording. He may not charge a recording fee for the insurance company since this is a cost which must be absorbed by the insurance company if it desires to have the instrument recorded.

PUBLIC OFFICERS; NOTARIES PUBLIC; FEES

28 December 1955

The only general statute fixing fees for notaries public is G. S. 10-8, which authorizes them to charge fifty cents for protesting a negotiable instrument, and certain other fees for taking depositions, etc. There are no fees prescribed by the general law for notaries taking acknowledgments of instruments. It has been customary for notaries to charge the same fees as those charged by clerks of the superior court under G. S. 2-26.

PUBLIC OFFICERS; POLICEMEN; RESIDENCE REQUIREMENTS OF TOWN POLICE

5 March 1956

A town policeman is a public officer, and, since one of the requirements for holding public office is that the person holding the same must be a qualified elector of the town which he serves, a town policeman is required to be a resident of the town which he serves in such capacity.

PUBLIC OFFICERS; NOTARY PUBLIC; JUSTICE OF THE PEACE

13 February 1956

Preparation of a chattel mortgage or deed of trust, whether for or without a fee or consideration, constitutes the practice of law within the meaning of G. S. 84-4; and it is unlawful for a notary public or a justice of the peace to prepare for other persons a chattel mortgage or deed of trust, whether or not charging a fee, unless the notary public or justice of the peace is a member of the State Bar and duly licensed to practice law in this State.

PUBLIC OFFICERS; REGISTER OF DEEDS; DOCUMENTARY STAMPS

16 September 1954

The amount of Federal Revenue stamps which must be placed on deeds to real estate is determined by the actual consideration rather than the consideration recited in the deed.

**PUBLIC OFFICERS; REGISTER OF DEEDS; DUTY TO FURNISH JURY LIST;
EXPENSE THEREOF**

12 June 1956

G. S. 7-153 requires the Clerk to the Board of County Commissioners to furnish to local justices of the peace, upon request, a copy of the jury list. The furnishing of the list is one of the duties imposed upon the Clerk by the statute and his office must assume the work and expense in performing this duty.

PUBLIC OFFICERS; REGISTER OF DEEDS; FEES

9 September 1954

Under the general law, a local registrar of vital statistics is authorized to charge a fee of fifty cents for furnishing a certified copy of a birth certificate.

PUBLIC OFFICERS; REMOVAL FOR CAUSE

15 June 1956

It is a uniform rule that the word "cause" in a statute authorizing the removing of officers for cause means legal cause, and not any cause which the person or persons authorized to make such removal may deem sufficient. It is implied that they cannot be removed at the mere will of those vested with the power of removal, or without any cause. It must be a cause relating to and affecting the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interest of the public. 22 R. C. L. 571, and 43 Am. Jur. 47.

PUBLIC OFFICERS; SHERIFFS; DEPUTIES; FEES

3 May 1955

If a Deputy Sheriff accompanies a Patrolman for the purpose of genuinely participating in a contemplated arrest or service of process, the Deputy Sheriff would be entitled to the usual fees.

PUBLIC OFFICERS; SHERIFFS; DEPUTIES; JURISDICTION

6 April 1956

A sheriff or his deputy has no authority in his official capacity to pursue a speeding car across the county line and arrest the driver in another county.

PUBLIC OFFICERS; SHERIFFS; DEPUTIES; RESIDENCE REQUIREMENTS**7 February 1955**

A deputy sheriff is a public officer, and one of the requirements for holding public office is that the officer be a resident of the political subdivision which he is to serve.

PUBLIC OFFICERS; SHERIFFS; DUTY TO EXECUTE PROCESS**29 June 1955**

Construing together G. S. 162-14 and G. S. 151-7, it is thought that a sheriff and constable have equal responsibility for serving process issued by a justice of the peace, depending upon whether the process is directed to the sheriff or to the constable.

PUBLIC OFFICERS; SHERIFFS; DUTY TO EXECUTE PROCESS**20 January 1955**

Every sheriff and his deputies, and every constable, shall execute all writs and other process to him legally issued and directed from a justice's court and make due return thereof, under penalty of forfeiting \$100.00 for each neglect or refusal, where such process shall be delivered to him ten days before the return day thereof.

PUBLIC OFFICERS; SHERIFFS; EJECTMENT PROCEEDINGS; CUSTODY OF PROPERTY AFTER EJECTMENT**24 August 1954**

When a sheriff moves property from a house pursuant to execution issued on a judgment in an ejectment proceeding, the sheriff is not required to store the property.

PUBLIC OFFICERS; SHERIFFS; JURISDICTION**4 November 1955**

Under the provisions of certain local laws the sheriffs and deputy sheriffs of Stokes and Surry counties are authorized to execute process anywhere in the Westfield High School District, which includes a portion of both counties, and justices of the peace in the school district have concurrent jurisdiction to try offenders for offenses committed in the school district irrespective of the county within which such offenses are committed.

PUBLIC OFFICERS; TOWN CLERK

4 May 1955

In order to hold the office of town clerk, the person desiring to serve in this capacity must be a legal resident of the town which he serves.

PUBLIC OFFICERS; TRUSTEES OF MUNICIPAL FIREMEN'S RELIEF FUND

8 December 1955

A trustee of a municipal firemen's relief fund is required to be a resident of the municipality in which he serves in such capacity.

PUBLIC UTILITIES; DISCRIMINATION; DEPOSIT FOR SERVICE

10 March 1955

A telephone company may discontinue service to a customer who becomes delinquent in the payment of its bill for services. It may charge a reconnection fee if such fee is included in the schedule of rates approved by the Utilities Commission. It may not discriminate unreasonably between subscribers in the matter of requiring a deposit before rendering service. Questions of fact as to whether there has been such discrimination are to be determined by the Utilities Commission.

RELIGION; TEACHING BIBLE; SPIRITUAL GUIDANCE

13 February 1956

North Carolina does not require that a person secure any special permit or license in order to teach the Bible or to offer spiritual guidance.

RESIDENCE; COUNTY FISHING LICENSE

21 June 1955

A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this State, for temporary purposes only, with the intention of returning.

RESIDENCE; HIGHWAY PATROLMEN AND POLICE OFFICERS

3 September 1954

There is no law which requires a State Highway Patrolman to be a resident of this State for a period of five years prior to his appointment.

In order for a person to hold public office in this State, he must be a qualified elector herein. In order for a person to be a qualified elector, he must have resided in this State for a period of one year and in the election district for a period of four months prior to the election in which he wishes to participate.

RESIDENCE; JUDGE OF RECORDER'S COURT

20 July 1954

Moving to a college town for the purpose of going to law school, with the intention of returning to the place of residence, would not constitute a change of residence or domicile, and a person would be entitled to hold office or vote in the place of his residence or domicile.

RESIDENCE; POLICE OFFICER; DE FACTO OFFICERS

3 October 1955

A police officer must be a resident of the municipality which he serves.

A police officer who does not reside within the municipality which he serves would be a *de facto* officer and his official acts could not be collaterally attacked. The only action which could be taken against him would be a *quo warranto* proceedings instituted in the superior court to try the title to his office.

RESIDENCE; TUITION

9 September 1954

Under the catalogue requirements of the University of North Carolina, a student who desires to have the benefit of the payment of in-State tuition must have been a legal resident of North Carolina for a period of six months prior to his enrollment in the University.

In order for a person to acquire a residence in North Carolina, he must have resided in this State for a period of one year with the intention of making it his permanent home.

SANITARY DISTRICTS; AUTHORITY OF STATE BOARD OF HEALTH TO FIX BOUNDARIES; TERRITORY NOT COVERED BY PETITION

8 November 1955

The procedure for creating a sanitary district is set out in detail in G. S. 130-34, and the provisions therein including the filing of a petition with the county board of commissioners, must be strictly complied with.

SANITARY DISTRICTS; AUTHORITY OF STATE BOARD OF HEALTH TO FIX
BOUNDARIES; TERRITORY NOT COVERED BY PETITION

28 December 1955

Upon consideration of a petition for the creation of a sanitary district, the State Board of Health is authorized to exclude territory included in the petition when the State Board finds that such territory has been improperly or unnecessarily included provided it determines as a matter of fact that the elimination of such territory would not reduce below 51% the number of resident free holders within the district who signed the petition at its creation and, provided further, that such a finding is so recited by the State Board in its minutes.

SANITARY DISTRICTS; PROCEDURE FOR EXTENDING DISTRICTS

8 September 1955

When a petition to annex territory to a sanitary district is signed by more than 50% but less than all of the owners of the territory proposed to be annexed, an election on the question must be held.

SANITARY DISTRICTS; PURCHASE OF WATER SYSTEMS; OWNERSHIP OUTSIDE
DISTRICT LIMITS; USE OF BOND MONEY; USE OF REVENUE
FROM WATER SALES

1 December 1955

A sanitary district may under the circumstances of the particular case purchase a water system outside the boundaries of the district and expend the proceeds of a bond issue when the purposes of such bond issue include such purchase, but income from water sales may not be used to make such purchase.

SCHOOLS; ABOLITION OF CITY ADMINISTRATIVE UNIT; EFFECT
ON SPECIAL SUPPLEMENTARY TAX

24 January 1955

A city administrative unit, when consolidated with the county administrative unit, could not thereafter levy a special supplementary tax voted by the people of the city administrative unit. The right to levy the tax would disappear upon the merging of the city and county units.

SCHOOLS; AUTHORITY OF COUNTY BOARD OF EDUCATION TO
ERECT TEACHERAGE

20 December 1954

Teacherages are specifically authorized as an item of expenditure for a county board of education by the provisions of G. S. 115-157(b) when included in the budget and the budget has been approved by the County Commissioners and the State Board of Education as required by G. S. 115-363.

SCHOOLS; AUTHORITY OF STATE BOARD OF EDUCATION TO CHANGE
BOUNDARY LINES OF CITY ADMINISTRATIVE UNIT; EFFECT ON
SUPPLEMENTAL TAX

16 May 1956

Under the provisions of G. S. 115-11(11), the State Board of Education has the authority in its discretion to change the boundary lines of city administrative units. It is thought that when a tract of land lying just within the boundaries of a city administrative unit is excluded therefrom and added to the county administrative unit, and a county school building is located thereon, such transfer will have no effect upon a supplemental school tax theretofore authorized in the city administrative unit. SPARKMAN v. COMMISSIONERS, 187 N. C. 241, is to be distinguished.

SCHOOLS; BANKS; BOND TO PROTECT PUBLIC DEPOSITS

7 July 1954

Under the provisions of G. S. 147-79 and G. S. 159-28, it is thought that a bond executed by a bank to secure a deposit of local school funds should be in an amount sufficient to protect the largest anticipated deposit of funds over and above the \$10,000 protection afforded by the Federal Deposit Insurance Corporation.

SCHOOLS; BOARD OF EDUCATION CANNOT ERECT OR REPAIR BUILDING
UNLESS SITE IS OWNED BY BOARD

15 September 1955

Under the language of Section 7, Article 15, Session Laws of 1955, a county or city board of education has no authority to erect or repair any school building unless the site upon which the same is located is owned in fee simple by said board.

SCHOOLS; BOND ELECTIONS; COST OF HOLDING

26 March 1956

It is thought that the cost of holding a school bond election is not properly a charge against the proceeds of said bonds. Instead, such expense should be borne by the current expense budget of the administrative school unit involved. If such an item has not been included in the budget, a supplemental budget should be filed and approved by the Board of County Commissioners. G. S. 153-107; G. S. 115-78; G. S. 115-116(6); G. S. 115-122, and G. S. 153-127.

SCHOOLS; BOND OF TREASURER OF CITY ADMINISTRATIVE UNIT

10 January 1955

G. S. 115-165(2) and G. S. 115-175 seem to require that the treasurer of a city administrative school unit make a separate bond covering school funds and that a blanket bond for employees executed under the provisions of G. S. 115-366 would not be sufficient to cover these funds in the hands of the treasurer.

SCHOOLS; BOND OF TREASURER OF CITY ADMINISTRATIVE UNIT

26 July 1955

It is thought that Subsection 2, Section 1, Article 10 of the New School Law (Chapter 1372, Session Laws of 1955), will not permit a blanket bond for the treasurer and other local school officials, since that section specifically requires the treasurer to make a separate bond.

Since Section 8, Article 9 of the same statute, requires a separate bond for the protection of State school funds, it is thought that State funds may not be taken into consideration in fixing the amount of the bond of the treasurer of a city administrative school unit.

SCHOOLS; CAFETERIAS; RIGHT TO EMPLOY AND DISCHARGE PERSONNEL

15 May 1956

It is thought that, under the provisions of G. S. 115-51 and G. S. 115-27, the County Board of Education, and not a principal or local school committee, has the authority to employ and discharge cafeteria personnel.

SCHOOLS; COMPULSORY SCHOOL ATTENDANCE LAW

7 November 1955

It is thought that the provisions of Section 1, Article 20 of the new school law, dealing with compulsory attendance, will control over the

provisions of Section 2, Article 19 of the same Act. Therefore, it is thought that the parents of an eight-year-old child are required to send such child to school if the child is of normal intelligence and in good physical health, and that the schools are required to accept such child for enrollment even though not presented for enrollment during the first month of school, and even though such child has never before attended school.

SCHOOLS; TRUANT OFFICERS; AUTHORITY TO CARRY CONCEALED WEAPONS

6 March 1956

An attendance officer of the public schools appointed pursuant to G. S. 115-168 does not have the authority to carry a concealed weapon.

SCHOOLS; CONSTRUCTION BY JOINT ACTION OF TWO COUNTIES

30 May 1956

G. S. 115-125 provides that no school may be operated by an administrative unit outside its own boundaries. G. S. 115-131 authorizes the Board of Education of a county or city administrative unit, with the approval of its Board of County Commissioners, to appropriate funds to aid in the establishment of a school facility and the operation thereof in an adjoining city or county administrative unit when a written agreement between the Boards of Education of the administrative units involved has been reached and the same recorded in the minutes of said Boards, whereby children from the unit making such appropriations shall be entitled to attend the school so established.

SCHOOLS; CONTRACTS; PLUMBING AND HEATING

6 January 1955

The provisions of Article 2, Chapter 87 of the General Statutes, as to the licensing of plumbing and heating contractors, are not applicable to persons, firms, or corporations who engage in the business of plumbing or heating contracting in a town having a population of less than 3500, according to the last official United States census.

SCHOOLS; CONTRACTS; REPAIRS

22 September 1954

Construing together G. S. 143-129, 132-133 and 135, it is thought that a county board of education may make repairs to a school building—using its own regular employees to do the work, when an honest estimate by

a capable agent of the board indicates that the estimated cost of the repairs will not exceed \$15,000.

SCHOOLS; CRIMINAL PROCEDURE; FORFEITURE OF BAIL BONDS

28 July 1954

Under the provisions of G. S. 15-116, it is thought that a county board of education has no authority to settle or cancel for less than face value a judgment rendered by the courts on a forfeited bail bond, but that the court in which the judgment was rendered does have the authority to entertain a motion made by the surety to lessen or remit the amount of the judgment upon such terms as the court shall deem just, taking into consideration the rights of the sureties and of the school children of the county. *STATE v. MOODY*, 74 N. C. 73; *STATE v. MORGAN*, 136 N. C. 593; *STATE v. CLARKE*, 222 N. C. 744 and *STATE v. WIGGINS*, 228 N. C. 76.

SCHOOLS; DISTRICT OR SCHOOL IN WHICH CHILD REQUIRED TO ATTEND; ALLOCATION OF FUNDS FOR VOCATIONAL SUBJECTS

24 September 1954

It is thought that a school child is registered when he presents himself for enrollment in the public school to which he has been assigned either by local authorities or by the State Board of Education under the provisions of G. S. 115-352.

Construing together G. S. 115-363(c) and G. S. 115-356, and the historic background of each of these sections, it is thought that in an apportionment of county-wide current expense funds between city and county units only the one-third raised by a tax levy should be counted as "funds for vocational subjects." Actually the apportionment of State and Federal funds is made by the State Board of Education and not by local authorities.

SCHOOLS; ELECTION AND QUALIFICATIONS OF ACTING SUPERINTENDENT

23 September 1955

It is thought that an acting superintendent of a city or county administrative unit must possess all the qualifications of a regular superintendent of schools. Section 2, Article 6 and Section 22, Article 5, Chapter 1372, Session Laws of 1955.

SCHOOLS; ELECTION OF PRINCIPALS

25 May 1956

G. S. 115-72 provides that the District Committee, upon the recommendation of the County Superintendent of Schools, shall elect the principals

for the schools of the District subject to the approval of the County Board of Education. This Section further provides that, in the event the District Committee and the County Superintendent are unable to agree upon the nomination and election of a principal, the County Board of Education shall elect the principal, which selection shall be final.

SCHOOLS; ELECTION OF TEACHERS; PROCEDURE

5 June 1956

Under G. S. 115-70 and G. S. 115-72, it is thought that teachers in a county administrative unit are elected by the district committee upon the recommendation of the district principal and subject to the approval of the county superintendent of schools and the county board of education. An advisory committee for a particular school may make recommendations of teachers to the superintendent and the district committee, but only the district committee has authority to elect.

SCHOOLS; ELECTION TO ENLARGE CITY ADMINISTRATIVE UNIT

14 October 1955

Since under the provisions of Section 3, Article 14, Chapter 1372, Session Laws of 1955, it is necessary for a petition for the consolidation of a part of a school district in a county administrative unit with a city administrative unit to be signed by a majority of the qualified voters who have resided within the area for the preceding twelve months, it is thought that the petition must describe the area proposed to be annexed; and that the only control that may be exercised by the city board of education affected is for the board to disapprove the petition as it is authorized to do under the provisions of Section 5 of that article. The county board would seem to have no control. BOARD OF EDUCATION v. BOARD OF COMMISSIONERS, 189 N. C. 650.

SCHOOLS; ENLARGEMENT OF CITY ADMINISTRATIVE UNIT BY ANNEXATION OF COUNTY DISTRICT

13 June 1956

Under G. S. 115-118 when an entire district of a county administrative unit is to be annexed to the adjoining city administrative unit a petition must be signed by the school committee of the district; but since the entire district is to be annexed and not just a part of it no petition by a majority of the qualified voters of the area is required. The petition of the committee should be addressed to both the County and the City Boards of Education and to the Board of County Commissioners. Both Boards of Education must endorse the petition and join in the request to the Board of County Commissioners that the election be called.

SCHOOLS; EXCLUSION OF PUPILS ON ACCOUNT OF MARRIAGE, ETC.

2 August 1954

It is thought that a child may not be excluded from the public schools solely on account of the fact that the child is married. Section 2 of Article IX of the State Constitution; G. S. 115-1; G. S. 115-54; G. S. 115-144 and G. S. 115-145.

SCHOOLS; EXPENSE BUDGET; VOCATIONAL EDUCATION; RETIREMENT SYSTEM

7 July 1954

Under a provision of the last paragraph of G. S. 115-356, the County Commissioners are authorized to levy taxes to provide necessary funds for clerical assistance to the County Superintendents of Schools.

G. S. 115-356 also authorizes the levy of taxes to provide necessary funds for teaching vocational agriculture and home economics, and trades and industrial vocational subjects supported in part from Federal vocational funds. Article 34, Chapter 115 of the General Statutes accepts upon behalf of the State all the provisions and benefits of the Smith-Hughes Act and provides for a system of vocational education. G. S. 115-356 provides that privately donated funds may be accepted and used in the vocational educational program.

The last paragraph of G. S. 115-356 authorizes the levy of taxes for "health and physical education" in public schools.

G. S. 115-378 authorizes the State to fix a salary schedule for bus drivers. G. S. 115-356 provides that when necessity shall be shown and upon approval of the County Board of Education, the State Board of Education may approve the use of fines and forfeitures to supplement any object or item of the current expense budget. This would seem to authorize the State Board of Education to allow a particular county, because of peculiar geographic conditions, to use fines and forfeitures to supplement the salaries of the bus drivers. When this is done, taxes are levied to replace the fines and forfeitures thus used.

G. S. 135-8(c) makes it the mandatory duty of county commissioners to provide funds for the Board of Education with which to pay dues to the State Retirement System on its maintenance personnel.

SCHOOLS; LIABILITY INSURANCE

23 September 1955

Under the provisions of Chapter 1256, Session Laws of 1955, it is thought that a county or city board of education may take liability insurance covering all of its employees, or only certain employees or vehicles and that governmental immunity for the acts of its employees will be waived only to the extent of the liability insurance carried.

SCHOOLS; QUALIFICATIONS OF COMMITTEEMEN

27 July 1955

Under the provisions of Section 1, Article 7, Chapter 1372, Session Laws of 1955 (The New School Law), it is thought that an employee of a county school system is not eligible for membership on a district committee.

SCHOOLS; RECODIFICATION; EXTRA-CURRICULAR ACTIVITIES

19 April 1955

A statute giving a county or city board of education authority to make all rules and regulations necessary for the conducting of extra-curricular activities under their supervision would permit such board to adopt the present athletic code if the board so desires.

SCHOOLS; SALE OF ABANDONED SCHOOL PROPERTY; AUTHORITY TO
EMPLOY AUCTIONEER

13 October 1955

It is thought that the provisions of Section 2, Article 15, Chapter 1372, Session Laws of 1955, permit a county or city board of education, in its discretion, to employ a real estate auctioneering firm to handle the details and conduct the sale of school property no longer necessary for school purposes. *MORTGAGE COMPANY v. WINSTON-SALEM*, 216 N. C. 726, and *ADAMS v. DURHAM*, 189 N. C. 232.

SCHOOLS; SALE OF SCHOOL PROPERTY; APPLICATION OF PROCEEDS

9 July 1954

Reasoning by analogy from the provisions of G. S. 115-86, it is thought that when school property belonging to a city administrative unit is abandoned, the same should be sold at public auction following the procedure set out in G. S. 115-86 and that the proceeds of the sale should be paid to the treasurer of the city school board to be taken into consideration by the Board of County Commissioners in the approval of future capital outlay budgets for the city administrative unit.

SCHOOLS; SCHOOL BUSES; ASSIGNMENT OF CHILD

9 August 1954

When a child has been assigned to a particular school in a school district, such child has no right to ride the school bus to any other school or to attend any other school.

SCHOOLS; SPEED LIMIT FOR ACTIVITY BUSES

19 January 1956

It is thought that G. S. 20-141(b) (3) makes it unlawful to operate an activity school bus loaded with children at a speed in excess of 45 miles per hour.

SCHOOLS; STATE BOARD OF EDUCATION; STATE BOARD OF HIGHER EDUCATION;
AUTHORITY TO LICENSE

2 December 1955

Construing together Article 33, Chapter 115 of the General Statutes (1955 Cumulative Supplement) and Article 16, Chapter 116 of the General Statutes (1955 Cumulative Supplement), it is thought that the State Board of Education still has the authority to grant license to confer degrees to private educational institutions, but that such power is vested in the State Board of Higher Education as to institutions of higher education supported wholly or in part by direct appropriations of the North Carolina General Assembly.

SCHOOLS; SUPPLEMENTAL TAX ELECTIONS

19 January 1955

G. S. 115-190 gives express authority to any local tax district or special bond tax unit having voted a maximum rate less than 50c to increase the levy to a maximum of 50c on the \$100 valuation of taxable property after an election has been held as provided for in Article 22, Chapter 115 of the General Statutes. See also G. S. 115-361.

SCHOOLS; SUPPLEMENTING SALARIES OF TEACHERS SERVING
AS ATHLETIC COACHES

9 September 1955

Construing together Sections 32, Article 5 and 3(1), Article 9, of Chapter 1372, Session Laws of 1955, it is thought that a county board of education has the authority to place in its budget an item to supplement the salaries of the teachers who coach athletics even though those teachers are paid their regular salaries from State funds. It is within the sound discretion of the County Commissioners as to whether such item will be approved or disapproved.

SCHOOLS; TEACHER'S CORPORAL PUNISHMENT

7 November 1955

A teacher is criminally responsible for assault upon a pupil under the following circumstances:

- "1. If he inflicts such punishment as produces or threatens lasting mischief, that is, permanent injury to the child.
- "2. If he inflicts punishment not in the honest performance of duty, but, under the pretext of duty, to gratify personal malice." STATE v. LONG, 117 N. C. 791; STATE v. PENDERGRASS, 19 N. C. 365.

SCHOOLS; TITLE TO SCHOOL PROPERTY; CONDEMNATION PROCEEDINGS

20 June 1956

It is thought that under provisions of G. S. 115-27 and G. S. 115-125 a condemnation proceeding to acquire land for school purposes in a city administrative unit should be brought in the name of the City Board of Education as a corporation and not in the names of the individual members of the Board, since title is being acquired by the corporation.

SCHOOLS; TORT CLAIMS; LIABILITY FOR INJURY TO MONITOR

25 March 1955

It is thought that a student monitor appointed under the provisions of G. S. 115-378.1 is not a State employee and is entitled to the same protection under the Tort Claims Act (Article 31, Chapter 143 of the General Statutes) as are other children riding a school bus.

SCHOOLS; TRANSPORTATION; BUSES

7 January 1955

G. S. 115-374 expressly provides that the use of school busses shall be limited to the transportation of children to and from school for the regularly organized school day and to the transportation of accredited teachers in the public school system on active duty while going to and from school in the discharge of their duties for the regularly organized school day. Therefore, it is thought that school children who walk to school regularly have no right to ride the school busses in order to visit other children who do regularly ride the busses. In such case, it is doubtful that the State Board of Education would be liable under the Tort Claims Act for an injury to or the death of such a child. G. S. 143-291. While it is doubtful that local school authorities would be personally liable in such case (BETTS v. JONES, 203 N. C. 590), it is suggested that such school children not be permitted to ride the school busses.

SCHOOLS; VACANCY ON BOARD OF TRUSTEES

27 August 1954

It is thought that the provisions of G. S. 115-352 do not repeal the provisions of a local act dealing with the selection and filling vacancies on the Board of Trustees of a city administrative unit in view of the following express provision in the statute:

"The board of trustees for any special charter district in any city administrative unit shall be appointed as now provided by law. If no provision is now made by law for the filling of vacancies in the membership of such board of trustees, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit."

BOARD OF EDUCATION v. COMMISSIONERS OF ONSLOW, 240 N. C. 118.

SCHOOLS; VACANCIES ON COUNTY BOARD OF EDUCATION

17 February 1956

Construing together G. S. 115-19 and G. S. 115-24, it is thought that a member of a county board of education whose term will expire in 1959 cannot give notice at the present time that she will resign sometime during the 1957 regular session of the General Assembly so that her successor can be nominated in the 1956 primary, since, without a resignation, there would be no vacancy that could be filled by the 1956 primary and appointment by the 1957 General Assembly.

SEARCH WARRANTS; RIGHT TO SEARCH WITHOUT WARRANT

30 March 1956

When a person consents to a search or when a search is made incidental to an arrest, no search warrant is necessary.

SEARCH WARRANTS; SEARCH OF DWELLINGS; SEARCH WHEN NO ONE
AT HOME

13 March 1956

There is nothing in the law which would require that a search of a dwelling pursuant to a valid search warrant be made only in the presence of the owner or lawful occupant of the building. The search warrant itself constitutes the authority for making the search.

SMALL LOAN COMPANIES; AUTHORIZED CHARGES

16 August 1954

In construing G. S. 53-166 which provides fees to be charged by loan agencies, it is held that such fees shall not be charged more frequently than once each sixty days on any loan or renewal thereof.

SMALL LOAN COMPANIES; PROBATE AND RECORDING FEES

7 June 1956

G. S. 53-165 fixes the fee which lenders may charge borrowers under the provisions of the Small Loans Act. Among other charges enumerated are "the fees necessary to probate and record such liens." Such language implies that the fees which may be deducted are only such as may be necessary to probate and record and such as will be used for that purpose. If the amounts deducted are not expended for the probate and recording of the papers, the lender has no right to retain them, treating the same as return for the services rendered in making the loan.

SOCIAL SECURITY; LOCAL SCHOOL SUPPLEMENTS; PAYMENT OF
RETROACTIVE 2%; SOURCE OF FUNDS

26 January 1956

Local school units which paid supplements to teachers during 1955 must pay 2% tax with respect thereto in view of the provisions of Chapter 135 of the General Statutes, as amended, and the referendum held pursuant thereto, effecting Social Security coverage retroactively for the year 1955.

SOCIAL SECURITY; OFFICIALS ON FEE BASIS; COVERAGE

7 February 1956

For Social Security purposes, a county official such as a register of deeds or clerk of court is an employee of the county even though he is compensated on a fee basis.

SOCIAL SECURITY; RETIREMENT SYSTEM; JUDGES

1 December 1955

Although a lawyer as such is excluded from coverage by the Federal Social Security Act with respect to old age and survivor benefits, a lawyer who is a salaried judge of a recorder's court may be eligible for Social Security coverage in his capacity as a governmental employee.

SOCIAL SECURITY; SCHOOL SUPPLEMENTS; RETROACTIVE EFFECT

19 January 1956

Pursuant to the provisions of Chapter 135 of the General Statutes, as amended in 1955, and pursuant to a referendum held thereunder with respect to Social Security coverage of teachers, a board of education which paid teachers supplemental compensation in 1955 has authority to make payment of the 2% Social Security tax necessary to effect coverage retroactively to January 1, 1955.

SOCIAL SECURITY; STATE PORTS AUTHORITY; STATE EMPLOYEES

28 February 1956

When the appropriate federal agreement is signed bringing temporary State employees under Social Security coverage, the State Ports Authority will be authorized and required to pay the 2% employer's Social Security tax with respect to such employees out of the Authority's operating revenues which revenues are also the source of such employees' wages.

SOCIAL SECURITY; COVERAGE; EMPLOYEE RECEIVING COMPENSATION UNDER WORKMEN'S COMPENSATION ACT; LEAVE OF ABSENCE WITHOUT PAY

3 April 1956

Even though a State employee is on leave of absence without pay, he continues to be a State employee and hence subject to Social Security coverage.

SOCIAL SECURITY; COVERAGE; EXCLUSIONS; AUTHORITY TO PROVIDE EXCLUSIONS

4 May 1956

The Social Security enabling act with respect to governmental employees authorizes the State Agency, with the approval of the Governor, to exclude certain types of positions from Social Security coverage.

SOCIAL SECURITY; COVERAGE; EXCLUSIONS; AUTHORITY TO PROVIDE EXCLUSIONS; STUDENTS; AGRICULTURAL EMPLOYEES

7 May 1956

The Social Security enabling act with respect to governmental employees authorizes the State Agency, with the approval of the Governor, to exclude certain students and agricultural workers.

SOCIAL SECURITY; COVERAGE; LIBRARIAN; STATE LABORATORY OF HYGIENE

9 May 1956

The librarian of the library located at the State Laboratory of Hygiene is a State employee for Social Security purposes although his salary is paid out of gifts to the State Board of Health.

**SOCIAL SECURITY; COVERAGE; MEMBERS OF LAW
ENFORCEMENT OFFICERS' RETIREMENT SYSTEM**

4 May 1956

A person who is a member of the Law Enforcement Officers' Benefit and Retirement System is not eligible for Social Security merely because the County has chosen to provide Social Security coverage for its employees, because the federal law prohibits Social Security coverage of a governmental employee whose position is covered by a retirement system unless and until the members of the Retirement System vote in favor of Social Security coverage in a referendum held pursuant to proper enabling legislation.

SOCIAL SECURITY; COVERAGE; MUNICIPAL RECORDERS' COURTS

20 January 1956

For Social Security coverage purposes, officers and employees of a municipal recorder's court are considered officers and employees of the particular municipality which such court serves.

SOCIAL SECURITY; COVERAGE; NORTH CAROLINA LEAGUE OF MUNICIPALITIES

8 May 1956

The North Carolina League of Municipalities is an instrumentality of political subdivisions of the state for Social Security purposes.

**SOCIAL SECURITY; COVERAGE; PART-TIME REGULAR EMPLOYEES;
CITY COUNCILMEN; COUNTY COMMISSIONERS**

20 January 1956

Under the provisions of the proposed agreement with the Federal Social Security Agencies, an exclusion from coverage of persons performing part-time regular services would exclude members of city and county governing boards except where such persons perform full time duties as, to illustrate, in some towns operating under the commissioner-form of municipal government.

SOCIAL SECURITY; COVERAGE; SANITARY DISTRICT; EMPLOYEES**23 July 1954**

The employees of a sanitary district created under Chapter 130 of the General Statutes are employees of a political subdivision of government, and in the opinion of this office are entitled to coverage as governmental employees under Title II of the Social Security Act pursuant to the agreement existing between this State and the Federal Security Administrator.

**SOCIAL SECURITY; COVERAGE; SPECIAL FUNDS;
LOCAL BOARDS OF EDUCATION****8 May 1956**

Employees paid by city or county boards of education out of "special funds" are subject to Social Security coverage in the same manner as other employees of such board.

SOCIAL SECURITY; COVERAGE; SPECIAL NURSES**4 May 1956**

A special nurse who is engaged for a few hours or a few days by a county to afford post-operative care to a certain indigent person is not a county employee for Social Security purposes.

**SOCIAL SECURITY; COVERAGE; STATUS OF COUNTY COMMISSIONERS AND
CITY ALDERMEN; COUNTY ATTORNEYS****25 January 1956**

G. S. 128-21, in defining "employee" with respect to persons eligible for coverage by the Local Governmental Employees' Retirement System, excludes such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office.

**SOCIAL SECURITY; COVERAGE; VOLUNTEER FIREMEN; STATUS
AS TO SOCIAL SECURITY COVERAGE****2 March 1956**

Members of a volunteer fire department of a town who receive no pay from the town are not subject to Social Security coverage as town employees.

SOCIAL SECURITY; COVERAGE; WHAT CONSTITUTES AN "EMPLOYEE"; PART-
TIME OR OCCASIONAL MEDICAL SERVICE AT STATE HOSPITAL

18 January 1956

Physicians, dentists and certain technicians who perform certain salaried services at a State hospital, but devote the greater part of their time to private practice, are not employees of the hospital within the meaning of the Social Security statutes. However, a doctor who is employed on a half-time basis is an employee for Social Security purposes.

SOCIAL SECURITY; COVERAGE; WHAT CONSTITUTES EMPLOYMENT;
SPECIAL ATTENDANTS AT STATE HOSPITAL

19 January 1956

A special attendant employed to attend a particular patient at a State hospital, whose compensation is provided by private individuals, is not a hospital employee for Social Security purposes even though the payment of the compensation is channeled through the hospital authorities.

STATE BOARDS AND COMMISSIONS; ARCHITECTS; AUTHORITY OF
MUNICIPALITIES TO REQUIRE COMPLIANCE WITH CHAPTER
83 OF THE GENERAL STATUTES

19 April 1956

A municipality may, by appropriate regulation or ordinance, require compliance with the State law governing the practice of architecture, but it is under no duty to require such compliance.

STATE BOARDS AND COMMISSIONS; ARCHITECTS; BOARD OF ARCHITECTURAL
EXAMINATION AND REGISTRATION; EXEMPTION FROM ACT

2 May 1956

Under Section 83-12 of the General Statutes a person may make plans or data for a building for himself without violating Chapter 83 of the General Statutes, relating to architects, regardless of the type of building involved.

STATE BOARDS AND COMMISSIONS; ARCHITECTS; LICENSING REQUIREMENTS;
PLANS FOR OWN HOME

27 January 1956

A person may design plans and prepare specifications for the construction of buildings for himself without being required to comply with the law relating to the practice of architecture.

STATE BOARDS AND COMMISSIONS; CONSERVATION AND DEVELOPMENT;
COMMERCIAL FISHING; DEFINITION OF "COMMERCIAL WATERS"

7 October 1954

The commercial fishing waters of the state are defined in terms of the areas below certain points on certain streams.

STATE BOARDS AND COMMISSIONS; CONSERVATION AND DEVELOPMENT;
COMMERCIAL FISHING; USING POISONS TO TAKE FISH

8 March 1955

It is illegal to take fish from the commercial waters of the State by the use of dynamite, giant or electrical power, explosives, drugs or poisons. That the fish will be used for scientific purposes is immaterial under the statute. Proposed legislation on this question is pending before the General Assembly.

STATE BOARDS AND COMMISSIONS; CHIROPRACTIC ASSOCIATION;
MEETINGS; QUORUM

1 December 1955

There apparently would be no legal objection to the North Carolina Chiropractic Association holding its annual convention on a steamship in the course of a Bermuda cruise.

STATE BOARDS AND COMMISSIONS; MILK COMMISSION; VIOLATIONS OF
MILK COMMISSION ACT; WARRANTS

12 September 1955

Warrants for violations of the State Milk Commission article should be obtained in the same manner as warrants for other criminal law violations. Such warrant may be procured by the chairman or by the executive secretary of the Milk Commission, depending on which has knowledge of the facts involved.

STATE BOARDS AND COMMISSIONS; OPTOMETRISTS; LICENSING BY COMITY

16 November 1955

The North Carolina State Board of Examiners in Optometry has authority, under G. S. 90-118, to adopt a rule requiring all applicants to take the regular examination in optometry, licensing no one on the basis of comity; adoption of such a rule is within the discretion of the Board. It

is doubtful that G. S. 90-124, as amended by the 1955 General Assembly, authorizes the Board of Examiners in Optometry to adopt a regulation which in effect prohibits any and all advertising by any means on the part of optometrists, except "the proper use of ethical, professional notices by optometrists."

STATE BOARDS AND COMMISSIONS; OPTOMETRY;
AID TO THE NEEDY BLIND

27 July 1954

Optometrists may make examinations of the eyes of applicants for public assistance in the Aid to the Blind program, as provided by G. S. 11-1-14, but the Board of County Commissioners may require an additional examination of the applicant's eyes by an ophthalmologist, and optometrists, therefore, cannot make this additional examination. The Commission for the Blind can only use an ophthalmologist in its program for the prevention of blindness, which is a medical program, and this examination includes refractive tests where no disease is found in the eye; the ophthalmologist, therefore, can prescribe the glasses needed although such person may use an optometrist likewise for the sole purpose of prescribing the necessary lenses or glasses, but the Commission for the Blind does not have to resort to this second examination if it causes the expenditure of more funds than would be involved in the first examination.

STATE BOARDS AND COMMISSIONS; OPTOMETRY; MINOR REPAIRS
TO SPECTACLES

3 January 1955

A person may make minor repairs to spectacles without the necessity of securing a license to practice optometry or a license as a dispensing optician.

STATE BOARDS AND COMMISSIONS; PHARMACY; ELIGIBILITY FOR
EXAMINATION; EXPERIENCE REQUIREMENT

30 August 1954

Experience gained by a person in filling prescriptions in a drugstore operated by a physician under a permit granted pursuant to G. S. 90-71 may be credited by the Pharmacy Board toward the twenty-year experience requirement of G. S. 90-61.

STATE BOARDS AND COMMISSIONS; PLUMBING AND HEATING CONTRACTORS;
SCHOOL BUILDINGS; MUNICIPALITIES

7 February 1956

Town ordinances relating to plumbing contractors and building inspection are applicable when a school building is involved in the same manner and to the same extent as any other structure.

STATE BOARDS AND COMMISSIONS; PLUMBING CONTRACTORS;
COUNTY REGULATIONS; PERMITS

21 June 1956

A county board of health may not adopt an ordinance which would permit an unlicensed person to install a plumbing system where such person would be required to have a license by State law. The county may require compliance with the State law as a condition for the issuance of a permit.

STATE BOARDS AND COMMISSIONS; EXPENDITURE OF FUNDS;
PORTS AUTHORITY

2 May 1955

The State Ports Authority can expend for extensions, enlargements and improvements of the port facilities the total sums authorized by the Governor and Council of State to be reserved for that purpose from annual net earnings. Items of expenditure do not have to be individually approved.

STATE BOARDS AND COMMISSIONS; PORTS AUTHORITY; UNEMPLOYMENT
COMPENSATION; EMPLOYEES NOT COVERED

20 January 1956

Employees of the State Ports Authority are not covered by the Unemployment Compensation Act.

STATE BOARDS AND COMMISSIONS; PUBLIC WELFARE; COUNTY BOARDS;
MERIT SYSTEM

16 January 1956

A county board of welfare is authorized (*G. S. 108-13*) to fix the salary of its Superintendent of Public Welfare.

When a salary has been set and is within the range fixed by the Merit System, the salary cannot be reduced because of inadequate funds, unless there is a general salary reduction affecting the salaries of all of the employees in the department on a comparable basis. The salary of an employee cannot be reduced below the minimum range for the class. *Salary Regulations, Merit System Council, Section 3 E*, as promulgated July 1, 1955.

STATE BOARDS AND COMMISSIONS; REFRIGERATION EXAMINERS; EMPLOYEES;
RETIREMENT; SOCIAL SECURITY

6 April 1956

The State Board of Refrigeration Examiners may secure Social Security coverage for its employees by making application to the State Agency which is the Secretary of the Teachers' and State Employees' Retirement System.

STATE BOARDS AND COMMISSIONS; REFRIGERATION EXAMINERS;
GRANDFATHER CLAUSE

11 May 1956

The grandfather clause in the Act relating to the Board of Refrigeration Examiners cannot by regulation be arbitrarily limited. However, the grandfather clause is inapplicable to persons who were not doing business in a town of 10,000 or more on January 1, 1956, even though such a person later engages in refrigeration contracting business in a town of more than 10,000.

STATE BOARDS AND COMMISSIONS; SALT MARSH MOSQUITO STUDY
COMMISSION; MERIT SYSTEM

29 July 1955

A salaried employee of State departments or agencies is not entitled to receive per diem for his service as a member of a State commission.

A salaried employee of a county or local health department is not entitled to receive per diem in such a case, while receiving a salary as such an employee, under the policy followed by the Merit System Council. The Council has statutory authority to establish a uniform schedule of compensation for employees subject to the Merit System.

An employee of the Federal Government is, under North Carolina law, entitled to receive per diem for his services as a member of a State Commission.

STATE BOARDS AND COMMISSIONS; WILDLIFE RESOURCES COMMISSION;
BOB WHITE QUAIL

5 June 1956

The Wildlife Resources Commission does not have statutory authority to provide special open season limits and special bag limits for privately owned hunting preserves which have been stocked with quail.

**STATE BOARDS AND COMMISSIONS; WILDLIFE RESOURCES COMMISSION;
AGREEMENT REGARDING FISHING ON KERR RESERVOIR**

13 April 1955

The North Carolina-Virginia Agreement relating to fishing on the Kerr Reservoir does not include daily State fishing permits issued by the State of North Carolina and the State of Virginia. Any person who possesses a resident or a nonresident State fishing license from this State may fish in Virginia waters under the terms of this Agreement. However, as stated above, the daily State fishing permit issued by either State authorizes fishing only in the waters of the State which issues the permit.

STATE COLLEGES; APPALACHIAN STATE TEACHERS COLLEGE

8 June 1955

Upon nomination of the President, the Board of Trustees of the Appalachian State Teachers College is authorized to elect such other officers, teachers and employees as may be nominated by him. It is doubtful that such a nomination could be made by an Acting President.

STATE SEAL; REPRODUCTION OF LIKENESS; NO STATUTORY PROHIBITION

18 January 1956

There is no statute prohibiting a manufacturer from placing a likeness of the State Seal on a souvenir tray.

STREETS AND HIGHWAYS; ADJOINING PROPERTY; DRIVEWAYS

1 February 1955

The owner of land adjoining the right-of-way of a highway may build a driveway across the unimproved portion of the highway so as to give access to the paved portion of the road from his property. Such driveway must be constructed so as to conform to proper regulations of the Highway Commission.

STREETS AND HIGHWAYS; CONTROL OF PARKING WITHIN MUNICIPALITY

15 February 1955

The State Highway and Public Works Commission has authority superior to that of a municipality to regulate parking on any street which forms a link in the State highway system if such street is maintained with State highway bonds.

STRUCTURAL PEST CONTROL ACT; COVERAGE

11 May 1956

The Structural Pest Control Licensing Act does not apply to general contractors erecting new structures.

STRUCTURAL PEST CONTROL ACT; GRANDFATHER CLAUSE

11 May 1956

The grandfather clause in the Structural Pest Control Act cannot be arbitrarily limited by regulations.

SUNDAYS AND HOLIDAYS; EASTER MONDAY; STATE AND NATIONAL BANKS

20 March 1956

The holiday designated in G. S. 103-4 as Easter Monday is a legal holiday only for State and national banks.

TAXATION; AD VALOREM; ABC STOCKS

29 March 1956

While it is not entirely clear, it is the position of this office that stocks of liquor owned by an ABC Board are probably subject to ad valorem taxes.

TAXATION; AD VALOREM TAXATION; AGRICULTURAL PRODUCTS IN STORAGE;
SPECIAL TAX RATES

15 February 1955

Under G. S. 105-294.1 certain agricultural products customarily requiring storing or processing for periods of more than one year in order to age or condition such property for manufacture, when the facts are so found by the Board of County Commissioners, are taxable for ad valorem tax purposes at a rate of only 60% of the current applicable property tax rate.

TAXATION; AD VALOREM TAXES; AUTHORITY TO TAX MINERAL RIGHTS

19 October 1955

When land is owned by one person and the mineral rights in said land are owned by a different person, the statute contemplates that the mineral

rights shall be subject to local ad valorem taxation. Section 701 of the Machinery Act.

TAXATION; AD VALOREM TAXATION; BOATS; TAX SITUS

19 October 1954

A boat owned by a North Carolina resident is subject to local North Carolina ad valorem taxation unless such boat has acquired a permanent tax situs outside this State.

**TAXATION; AD VALOREM TAXES; CHANGING REAL PROPERTY
VALUATION IN NON-REASSESSMENT YEAR**

15 November 1954

Under the provisions of Subsection (6) of G. S. 105-330, a board of county commissioners is authorized to change certain property valuations for ad valorem tax purposes after the Board of Equalization has finished its work. It is not too late to make such a change in November of the year in which the Board of Equalization could have acted, but it is not mandatory under such circumstances that the board of county commissioners take action.

**TAXATION; AD VALOREM TAXES; COLLECTION; GARNISHMENT;
DELINQUENT PROPERTY TAXES**

3 January 1956

The remedy of garnishment is available to local authorities for the purpose of collecting delinquent ad valorem property taxes, whether such taxes arise from personal property or real property.

TAXATION; AD VALOREM TAXES; COLLECTION; RELEASE OF TAX LIABILITY

15 May 1956

There is no authority for a board of county commissioners to release any taxes against property which have been duly assessed against the same. Members of a board of county commissioners are personally liable should they permit such taxes to be released.

**TAXATION; AD VALOREM TAXES; COLLECTION; REMOVAL OF
PROPERTY FROM STATE**

20 January 1956

When a nonresident has machinery and equipment stored on a vacant lot in this State on January 1st, he is required to pay ad valorem taxes

to the proper unit in this State, under the facts presented. G. S. 105-385 contains a limited right to seize the property if its removal from the State is attempted.

**TAXATION; AD VALOREM TAXES; COLLECTION; REQUIRING BANK TO
FURNISH LIST OF DEPOSITORS**

19 October 1955

A local tax collector has no authority to require local banks to furnish him with lists of their depositors.

**TAXATION; AD VALOREM TAXATION; COLLECTION; OUTSIDE UNIT;
CITY RESIDENTS REMOVING TO COUNTY**

7 November 1955

A city may collect delinquent ad valorem taxes from former residents who have removed to rural areas of the county in which the city is located by the procedure set forth in G. S. 105-386.

**TAXATION; AD VALOREM TAXES; COLLECTION OUTSIDE UNIT;
FEE; WAKE COUNTY**

29 August 1955

The Tax Collector of Wake County is required to turn over to the Wake County Treasurer all fees which he receives from collections for outside units.

**TAXATION; AD VALOREM TAXES; COMMISSIONS ON COLLECTIONS;
PAYMENT TO GENERAL FUND**

18 August 1955

The commissions for collecting taxes as set out in G. S. 105-424 could be deducted from collections of all levies, including levies for other than general fund purposes, to the extent necessary to pay the expense of the Tax Collector and his office.

**TAXATION; AD VALOREM; COUNTY BOARD OF EQUALIZATION;
TIME OF MEETING; ADJOURNMENT DATE**

29 March 1956

G. S. 105-327 (5) states that the County Board of Equalization and Review shall complete its duties not later than the third Monday following

its first meeting. It is my opinion that the Board may recess for later meetings on fixed days. However, once the Board adjourns sine die, it cannot thereafter reconvene.

TAXATION; AD VALOREM TAXATION; COUNTY BOARD OF EQUALIZATION
AND REVIEW; REVALUATION

14 June 1955

A County Board of Equalization and Review would not be authorized to take final action with respect to proposed real property revaluations intended to become effective as of January 1 of the subsequent year because such matters would not properly be before said Board before January 1 of the subsequent year. However, as a practical matter, perhaps time could be saved by informal consideration of such matters during the year preceding the effective date of the new revaluation.

TAXATION; AD VALOREM TAXATION; COUNTY BOARD OF EQUALIZATION
AND REVIEW; REVALUATION

6 June 1955

In other than a revaluation year, a County Board of Equalization and Review could make changes in real property valuations only to the extent provided in G. S. 105-279 (Section 301 of the Machinery Act).

TAXATION; AD VALOREM TAXES; DEDUCTIONS; PRIVATE HOSPITAL;
OPERATION OF DRUG STORE

16 January 1956

If a private hospital operated for profit maintains a drugstore open to the general public for normal drugstore purposes, the property occupied by the drugstore is subject to local ad valorem taxation without the benefit of the credit allowed by Section 602 (a) of the Machinery Act.

TAXATION; AD VALOREM; DELINQUENT TAX COLLECTION;
GARNISHMENT; FEE FOR COLLECTION

2 March 1956

The Machinery Act does not contain any provision authorizing a delinquent tax collector to collect a 10% fee for issuing and collecting on a garnishment.

TAXATION; AD VALOREM TAXES; DELINQUENT TAXES; GARNISHMENT

18 February 1955

Garnishment procedure may be employed to collect delinquent taxes with respect to both real and personal property.

TAXATION; AD VALOREM TAXES; DELINQUENT TAXES;
PAYING INTO GENERAL FUND

12 November 1954

A Dare County local Act, Chapter 565 of the Session Laws of 1953, relating to the use of delinquent taxes was not repealed by a subsequent general law, Chapter 827 of the Session Laws of 1953, because the local Act was specific and, therefore, would be controlling inasmuch as the general law thereafter enacted did not provide for specific repeal of the local Act in question.

TAXATION; AD VALOREM TAXATION; DELINQUENT TAXES;
STATUTORY RIGHT TO PLACE IN GENERAL FUND

2 September 1954

Under the provisions of G. S. 153-9 taxes which, when collected, have been more than two years delinquent may, upon authorization of the Board of County Commissioners, be paid into the general fund of the county. If a surplus is created thereby, such surplus could be expended for the purpose of defraying part of the cost of a County Medical Health Center. Such an expenditure would certainly be for a public purpose and, taking into account that it will house part of the County Health Department, it is possible that it may even be a necessary expense.

TAXATION; AD VALOREM TAXATION; DELINQUENT TAXES;
USE IN ESTABLISHMENT OF MEDICAL CENTER

11 August 1954

There are no statutory provisions permitting the borrowing of money by a county in anticipation of the collection of delinquent taxes.

TAXATION; AD VALOREM TAXES; DELINQUENT TAXES;
USE OF DELINQUENT TAXES

27 July 1955

The repeal of G. S. 153-42 by Chapter 973 of the Session Laws of 1953 does not repeal G. S. 153-9(42).

TAXATION; AD VALOREM TAXATION; ESTATE BY ENTIRETIES; TAX ON
PERSONAL PROPERTY OWNED BY HUSBAND AND PARTNER

19 July 1954

A husband's personal property taxes do not constitute a lien on real property owned by the husband and wife by the entireties.

TAXATION; AD VALOREM TAXES; EXEMPTIONS; CATHOLIC RETREAT

22 May 1956

A Catholic nunnery and retreat owned by the Bishop of North Carolina is exempt from ad valorem taxes.

TAXATION; AD VALOREM TAXES; EXEMPTION; COTTON SUBJECT
TO IN-TRANSIT PRIVILEGES

5 June 1956

Whether cotton in storage is subject to exemption from the payment of local ad valorem taxes because it is subject to the transit privileges permitted in interstate commerce is a matter of contract between the shipper, the taxpayer and the railroad.

TAXATION; AD VALOREM TAXES; EXEMPTIONS PATRIOTIC ORGANIZATIONS

22 May 1956

An amateur radio club does not qualify as a patriotic organization entitled to exemption from the payment of ad valorem taxes.

TAXATION; AD VALOREM TAXES; EXEMPTIONS; PERSONAL PROPERTY;
HOUSEHOLD GOODS IN STORAGE

9 December 1954

Household furniture stored in a warehouse is not exempt from ad valorem property taxation under the provisions of G. S. 105-297 (8) relating to exemption of certain household furniture.

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PROPERTY HELD BY
CIVITAN CLUB (FOR BENEVOLENT AND COMMUNITY PURPOSES)

28 October 1955

Real property held by a Civitan Club, although used for charitable and benevolent purposes, is not exempt from ad valorem taxation.

**TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PROPERTY
OWNED BY COLLEGE; ADJACENT PROPERTY**

7 October 1955

The statute does not exempt from ad valorem taxes commercial property owned by the college and rented to firms not connected with the college. Buildings owned by the college and rented to students are exempt. Residences owned by the college and rented to members of the faculty are exempt if such buildings are situated on adjacent land owned by the college. Residential property owned by the college and rented to persons not connected with the college is not exempt.

**TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY; ALLIED
ARTS OF DURHAM, INC.; USE OF OFFICE SPACE BY JUNIOR LEAGUE**

14 September 1954

Under the circumstances set forth in this letter, the use of office space by the Durham Junior League would not be enough to destroy the property tax exemption status of Allied Arts of Durham, the educational organization owning and using the building in which such space is made available.

**TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL AND PERSONAL
PROPERTY; DAY NURSERY; EDUCATIONAL INSTITUTIONS;
FREE INDUSTRIAL SCHOOL**

23 May 1955

A day nursery is not exempt from ad valorem taxes as an educational institution because a day nursery is primarily a child-caring institution.

An industrial school operated by a manufacturing corporation for the primary purpose of training persons in servicing its products is not exempt from ad valorem property taxes as an educational institution.

**TAXATION; AD VALOREM TAXES; EXEMPTIONS; SALE TO
EXEMPT ENTITY AFTER JANUARY 1ST**

16 May 1956

Real property subject to ad valorem taxes is sold after January 1st to a tax-exempt entity. The sale does not remove the liability for the payment of taxes for the year.

TAXATION; AD VALOREM TAXATION; EXEMPTIONS;
WOMAN'S CLUB PROPERTY

18 February 1955

A club house owned by a Woman's Club and a Junior Woman's Club is not exempt from ad valorem property taxation.

TAXATION; AD VALOREM TAXATION; EXTENSION OF CORPORATE LIMITS;
TIME WHEN TAXES MAY BE LEVIED

30 December 1954

Under the provisions of G. S. 160-445, territory newly annexed to a city or town is subject to municipal taxes levied for the fiscal year following the date of annexation.

TAXATION; AD VALOREM TAXATION; FISCAL YEAR

27 October 1955

G. S. 160-445 provides that newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation. G. S. 160-371 fixes the fiscal year of the municipality as July 1 to June 30. Therefore, territory annexed to a municipality by act of the 1955 General Assembly ratified before July 1, 1955 will be subject to 1955 ad valorem taxation, such taxation being actually levied for the fiscal year 1955-1956.

TAXATION; AD VALOREM TAXES; GARNISHMENT; SERVICE OF PAPERS

8 June 1955

If a garnishment notice is properly directed to a constable, such constable would be authorized to serve a garnishment notice issued pursuant to the Machinery Act because G. S. 151-7 provides in part that "Constables . . . shall execute all precepts and processes of whatever nature to them directed by any justice of the peace or other competent authority within their county. . . ."

TAXATION; AD VALOREM TAXATION; GARNISHMENT;
FUNDS IN HANDS OF CLERK OF COURT

7 October 1955

Excess funds held by the Clerk of Court for the benefit of a taxpayer and subject to no other claims in the hands of the Clerk or to judicial process may be garnished by a county to satisfy delinquent ad valorem taxes.

TAXATION; AD VALOREM TAXES; GRAIN MILLS; GRAIN INVENTORY

5 November 1954

There is no provision in the statutes permitting the deduction of money borrowed for the purchase of grain in determining the value of the grain for ad valorem tax purposes.

TAXATION; AD VALOREM TAXATION; HOUSING PROJECTS CONSTRUCTED WITH PRIVATE CAPITAL ON FEDERALLY OWNED PROPERTY

12 August 1955

Housing units constructed by private capital on federally-owned property leased from the Federal government is subject to local ad valorem taxation.

TAXATION; AD VALOREM; LIABILITY OF LESSEE; LESSEE IN BANKRUPTCY

2 March 1956

Ad valorem taxes, generally speaking, are imposed on the owner of the realty. When the lessor and lessee contract that the lessee shall pay the taxes, and the lessee then is adjudicated a bankrupt, the county may file a claim against the bankrupt on the theory of a contract for the benefit of a third party. However, such claim is based on contract and is not entitled to the priority given tax claims by the Bankruptcy Act.

TAXATION; AD VALOREM TAXATION; LIENS; DISPOSITION OF TAX LIEN; RELEASE OF SEPARATE PARCEL

12 July 1954

When the lien of taxes of any taxing unit for any year attaches to two or more parcels of real estate owned by the same taxpayer, said lien may be discharged as to any one parcel upon payment, by or on behalf of any person (other than said listing taxpayer) having an interest in said property, of the taxes for said year on the parcel or parcels sought to be released, with interest and penalties thereon, plus a proportionate part of personal property, poll and dog taxes owed by said listing taxpayer for the same year, with interest and penalties thereon.

TAXATION; AD VALOREM TAXATION; MOTOR VEHICLES; TAX SITUS

2 May 1956

A business firm has its principal place of business in an incorporated town and owns and operates motor vehicles in carrying on its business

activities. At night and on weekends, the vehicles owned by the business are driven to the homes of employees who live outside the corporate limits of the town. Notwithstanding the fact that the vehicles in question are kept outside the corporate limits of the town at night and on weekends, the vehicles are, under G. S. 105-302 (1) and (4), subject to ad valorem taxes levied by the town. Also, for purposes of G. S. 20-97 (a), which authorizes a town to levy a privilege license tax upon a motor vehicle "resident" within the town, the motor vehicles referred to above are for purposes of the \$1.00 privilege license tax authorized by G. S. 20-97 (a) "resident" within the incorporated town.

TAXATION; AD VALOREM TAXATION; MOTOR VEHICLES; TAX SITUS

13 July 1955

The tax situs of personal property for ad valorem tax purposes is generally that of the residence of the owner and when a person owns a trucking line operated from an office in the town of his residence, such vehicles have a tax situs in that town unless it be shown that a place of storage or use of such vehicles is maintained at some other place in which case such other place would be the tax situs thereof.

**TAXATION; AD VALOREM TAXATION; MUNICIPAL CORPORATION;
THEFT OF TAX RECEIPTS; PROCEDURE**

27 January 1955

When tax receipt books of a town are stolen, new receipt books may be prepared from appropriate records and collection of unpaid taxes enforced notwithstanding the theft of the tax books.

**TAXATION; AD VALOREM TAXATION; MUNICIPALLY-OWNED PROPERTY;
EXEMPTION FROM COUNTY TAXATION**

15 October 1954

A lot held by a city for cemetery purposes is not subject to county ad valorem taxation even though such lot is not actually used for cemetery purposes for a reasonable time.

**TAXATION; AD VALOREM TAXES; NORTH CAROLINA CORPORATION;
DISPLAY FIXTURES LOCATED OUTSIDE STATE**

5 June 1956

A North Carolina corporation maintains at permanent locations outside the State certain display fixtures. Under the particular facts, these fixtures are not subject to ad valorem taxation in North Carolina.

TAXATION; AD VALOREM TAXATION; NORTH CAROLINA RESIDENT;
AUTOMOBILE PURCHASED AND KEPT OUT OF STATE

27 January 1955

An automobile owned by a North Carolina resident is subject to ad valorem taxation in such resident's home county where he returns for visits even though he is temporarily in the armed forces and ordinarily keeps such automobile with him at a military reservation outside this State.

TAXATION; AD VALOREM; PARTIAL PAYMENT

25 October 1954

Unless the governing body directs otherwise, a tax collector must accept partial payments of taxes tendered to him and issue partial payment receipts therefor. In crediting such a payment on the tax for any year, the payment must first be applied to accrued penalties, interest and costs and then the balance is applied on the principal amount of the tax in question.

TAXATION; AD VALOREM TAXES; PENALTIES; FAILURE TO LIST

3 January 1956

Section 1109 of the Machinery Act imposes a 10% penalty for failure to list property or a poll before the close of the regular listing period.

TAXATION; AD VALOREM TAXATION; PENALTIES AND INTEREST; MEMBERS OF
ARMED FORCES

15 July 1954

Under the provisions of G. S. 105-345 (7) and G. S. 165-44, the governing body of a city or county may relieve a member of the armed forces from the payment of interest on delinquent ad valorem property taxes, but such governing body is not required to do so.

TAXATION; AD VALOREM TAXATION; PERIOD FOR WHICH TAXES LEVIED

12 November 1954

Ad Valorem taxes are levied for a fiscal year beginning July 1st and ending the following June 30th even though the lien therefor attaches on January 1st preceding said July 1st.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; ASSESSMENT

3 March 1955

The general statutory provision in effect with respect to the valuation of property for tax purposes provides that "all property, real and personal, shall as far as practicable, be valued at its true value in money. . . ."

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; AUTHORITY TO
LEVY ON PERSONAL PROPERTY

27 September 1954

It is not necessary for a city tax collector to secure permission from the city governing body before he levies on personal property for taxes. He has discretionary authority to do this without special authorization. On the other hand, such action becomes mandatory if the governing body so directs.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; CONSIGNED
PROPERTY; DUTY OF OWNER TO LIST

15 February 1955

Even though a consignee of personal property is required by G. S. 105-317 to file with the tax supervisor a list showing the owner thereof and the amount of consigned property in the hands of the consignee, it remains the duty of the owner under G. S. 105-304 (1) to list such property for ad valorem taxation.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; DATE AS OF
WHICH PROPERTY LISTED

18 January 1955

A person who acquires an automobile subsequent to January 1, 1955, is not liable for any 1955 ad valorem personal property taxes with respect to such automobile. Such automobile should be listed by the person who was the owner on January 1, 1955.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; EXEMPTIONS;
PEANUTS IN STORAGE

22 November 1954

There is no general statutory authority for a county or town to exempt peanuts from ad valorem taxation.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; LEVY

2 June 1955

The statutory procedure for levying on personal property and collecting ad valorem tax with respect thereto is set forth in Subsection (c) of G. S. 105-385 (Section 1713 of the Machinery Act).

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; LEVY

11 March 1955

In order to collect municipal real property taxes, a town may levy on the owner's automobile which is not subject itself to town taxation, but the town's lien after the levy would be inferior to prior outstanding liens.

TAXATION; AD VALOREM; PERSONAL PROPERTY TAXES; LIEN;
AFTER-ACQUIRED REAL ESTATE

28 March 1956

The lien for delinquent personal property and poll taxes does not attach to after-acquired real estate. The lien for ad valorem taxes on personal property sold to a bona fide purchaser prior to levy for the taxes is subordinate to the rights of the bona fide purchaser.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; LIEN FOR TAXES;
ESTATE BY ENTIRETY

4 February 1955

Property taxes may not be collected for the year 1955 by levy upon the sale of property prior to the time the taxes become due in October.

No lien for taxes with respect to property owned solely by a husband or solely by a wife will attach to real property held by the husband and wife by the entireties.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; MOTOR VEHICLES;
ASSESSMENT

26 January 1955

The North Carolina Statutes do not make any special provisions for assessing motor vehicles for ad valorem tax purposes on any different basis than that provided for other tangible personal property.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; PLACE OF LISTING;
PROPERTY KEPT AT PLACE OTHER THAN RESIDENCE OF OWNER

13 September 1954

When trucks and machinery are used in connection with a garage or place of business outside the county of the residence of the owner, such property should be listed in the county where same is located rather than in the county of the owner's residence.

TAXATION; AD VALOREM TAXES; PERSONAL PROPERTY; PLACE OF LISTING;
RESIDENCE OF STATE EMPLOYEES

14 September 1955

When a person has two residences, the place where he resides more than six months in the year is by statute the proper residence for listing personal property for ad valorem tax purposes.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; PLACE OF LISTING;
TRUCKS OUT OF TOWN ON JANUARY 1ST

11 August 1954

Motor vehicles owned by a town resident and generally kept in the town are subject to town ad valorem taxation even though such motor vehicles are absent from the town on January 1st.

TAXATION; AD VALOREM TAXES; PERSONAL PROPERTY TAXES; PRIORITY;
SALE UNDER CHATTEL DEED OF TRUST

28 March 1956

The lien for delinquent personal property and poll taxes does not attach to after-acquired real estate. The lien for ad valorem taxes on personal property sold to a bona fide purchaser prior to levy for the taxes is subordinate to the rights of the bona fide purchaser.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY;
PROPERTY "IN TRANSIT"

6 May 1955

The mere fact that property stored in a warehouse is subject to "in transit" interstate railroad rates does not, of itself, exempt such property from ad valorem taxation. The mere fact that under applicable regulations

the property in question is subject to certain preferred "in transit" rates in the course of interstate shipment does not have any relation to the question of whether such property is moving in interstate commerce in such a manner as to make local taxation thereof unconstitutional. The "in transit" status merely relates to a preferred tariff schedule available with respect to certain products under certain circumstances which are unrelated to questions of constitutionality of taxation.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; PROPERTY
PURCHASED IN DECEMBER AND DELIVERED ON JANUARY 2ND;
TAX SITUS

8 June 1955

Personal property is subject to ad valorem taxation in accordance with ownership as of January 1 of any year. When a sale is being consummated around the year's-end, the answer to the question as to ad valorem tax liability with respect thereto for the new year depends on whether or not the sale was completed before January 1. Whoever, in fact, owned the property on January 1 would be liable for listing such property for taxation.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; SCHOOL
SUPERVISOR'S AUTOMOBILE; TAX SITUS

8 June 1955

When a Wake County resident spends nine months of the year in another county as a public school supervisor, the question as to where such person's automobile should be listed for taxation depends on the facts of the particular case. If such person, as usually would be the case, maintains a place to garage said automobile in such other county during the greater part of the year for use in connection with performing such person's duties, then such county would be the tax situs of said automobile pursuant to Subsection (4) of G. S. 105-302 (Section 800 of the Machinery Act).

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; SITUS; BOATS

9 July 1954

A boat is subject to ad valorem taxation under the same laws as are applicable to other tangible personal property.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; SITUS;
FATHER'S CAR KEPT BY SON AT COLLEGE

6 April 1955

Ordinarily a motor vehicle is subject to taxation at the owner's place of residence, and the mere fact that an owner permitted his son to use

such automobile while at college would not be sufficient to change the tax situs of said automobile.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; SITUS;
TOWELS, LINENS, AND TOWEL CABINETS

22 June 1955

When a linen and towel service company maintains an office in one county and regularly distributes and rents towels and linens to customers in other counties, which linens and towels are regularly collected for laundering and replaced with other towels and linens (not necessarily the same ones such customer had previously), such towels and linens do not acquire an ad valorem property tax situs where the customers are located. Towel cabinets or racks furnished the customers which are placed with the customers in counties other than that where the company's office is located, for an indefinite period, acquire a tax situs in the county where located.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAX SITUS;
PROPERTY IN SEASONAL RESIDENCE

2 February 1956

Furniture and other tangible personalty kept or used in connection with any temporary or seasonal residence shall be listed for ad valorem taxes in the township in which the temporary or seasonal residence is located.

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXICAB
USED IN MUNICIPALITY

6 September 1955

A taxicab owner who lives outside of a municipality and keeps his vehicles there is not required to list the taxicabs for municipal ad valorem taxation when the only times that the cabs are within the municipality are when they are engaged in carrying passengers.

TAXATION; AD VALOREM TAXES; PERSONAL PROPERTY; TRUCKS USED IN
CONNECTION WITH BUSINESS IN CITY BY NONRESIDENT OWNER

18 November 1954

When personal property such as a truck is used in connection with a business operated at a place other than the residence of the owner and is kept at such place of business, the truck should be listed for ad valorem

taxation at such place of business rather than at the residence of the owner.

TAXATION; AD VALOREM TAXATION; PROPERTY LOCATED ON FEDERAL LAND

31 December 1954

Personal property kept in a Federal area over which the Federal government has accepted exclusive jurisdiction, and which has not been leased to non-Federal persons or agencies, is not subject to local ad valorem property taxation.

TAXATION; AD VALOREM TAXATION; PROPERTY ON KERR DAM RESERVOIR

27 December 1955

Tangible property owned by private parties which is located on the Kerr Dam Reservoir is subject to county ad valorem taxation.

TAXATION; AD VALOREM TAXATION; QUADRENNIAL ASSESSMENT;
EMPLOYMENT OF EXPERT

16 July 1954

Under the provisions of G. S. 105-291 and Chapter 273 of the Public-Local Laws of 1937, experts may be employed in Buncombe County to assist in quadrennial revaluation for ad valorem tax purposes.

TAXATION; AD VALOREM TAXATION; QUADRENNIAL REVALUATION;
ASHE COUNTY

27 January 1955

Even though a county was excepted from the first of a series of biennial legislative extensions of time for having a quadrennial revaluation for ad valorem tax purposes, such county may have a revaluation pursuant to more recent laws where such county was not excepted.

TAXATION; AD VALOREM TAXATION; QUADRENNIAL REVALUATION; POST-
PONEMENT OF REVALUATION; RIGHT TO PAY INTO GENERAL FUND; EXPERT

18 April 1955

When the General Assembly has by general law authorized the postponement of a quadrennial revaluation for ad valorem tax purposes, no

special enabling legislation is necessary for a county to have a revaluation pursuant to such postponement.

Under G. S. 153-9, Subsection 42, a board of county commissioners is authorized to place in the county general fund proceeds of taxes which are, when collected, two or more years delinquent and such funds could be made available to defray expenses of a quadrennial revaluation.

A county could not make a binding contract so as to be indebted for payment for revaluation work in excess of an amount available in a single fiscal year.

**TAXATION; AD VALOREM TAXATION; RATE OF LEVY; GENERAL LAW
SUPERSEDES CHARTER PROVISION**

4 May 1955

G. S. 160-402, authorizing an ad valorem tax rate not exceeding \$1.50 per \$100.00 valuation, specifically supersedes prior special charter provisions authorizing lower tax rates.

**TAXATION; AD VALOREM TAXES; REAL PROPERTY; EXEMPTIONS; LEASED
TOWN PROPERTY**

3 February 1956

This opinion first discusses the question of the authority of a county to impose ad valorem taxes on a portion of the town hall rented to private business firms. The opinion also rules that portions of a building used for lodge purposes may be taxed when those portions are used for commercial purposes. The opinion also rules that cemetery property held for the purpose of sale or rental is subject to ad valorem taxes.

**TAXATION; AD VALOREM TAXATION; REAL PROPERTY; EXEMPTIONS;
PROPERTY TRANSFERRED AFTER JANUARY 1ST TO TAX-EXEMPT GRANTEE**

30 December 1954

When a lien for property taxes has attached to real property, the transfer thereafter of such property to a tax-exempt grantee does not discharge such lien.

TAXATION; AD VALOREM TAXATION; REAL PROPERTY; TIMBER; ASSESSMENT

7 January 1955

Real property may be revalued in other than quadrennial revaluation years only in the manner and to the extent provided in G. S. 105-279 (Section 301 of the Machinery Act).

TAXATION; AD VALOREM TAXES; REDUCING DELINQUENT TAXES PROHIBITED

11 February 1955

G. S. 105-403 prohibits a town governing body from arbitrarily reducing the amount of delinquent taxes owed by a taxpayer.

TAXATION; AD VALOREM TAXATION; REFUNDS; DOUBLE LISTING

13 September 1955

Refunds for ad valorem taxes erroneously collected due to double listing may be made only for the two-year period provided in G. S. 105-405.1.

TAXATION; AD VALOREM; REFUNDS; LISTING OF ERRONEOUS ACREAGE

22 March 1956

Where a taxpayer erroneously listed a greater acreage for taxation than actually owned and paid taxes thereon, he would not be entitled to a refund as for overpayment unless such taxes have been paid under protest and demand for refund was made in writing within 30 days after such payment, and not then unless the listing of an excess acreage could be considered as being the result of a clerical error, and it is doubtful whether the erroneous listing of an excess acreage can be considered as a "clerical error" within the purview of G. S. 105-405.1.

TAXATION; AD VALOREM TAXATION; RELEASE OF LIEN ON PARCEL

14 December 1955

When the listing taxpayer seeks a release from the current ad valorem tax lien of a parcel of a subdivided tract of land, he must pay the taxes on the area to be released and all personal property and poll taxes owed by him for the same year. If the payment and release is on behalf of the purchaser, it is sufficient that he pay the taxes on said portion of land plus a proportionate part of the personal property and poll taxes owed by the listing taxpayer.

**TAXATION; AD VALOREM TAXES; RELIEF FROM TAXES LISTED IN
WRONG COUNTY**

14 December 1955

A town has the authority to release from ad valorem taxes property on which taxes were levied but which was not within the jurisdiction of the town.

TAXATION; AD VALOREM TAXATION; REVALUATION; EMPLOYMENT OF EXPERTS

18 August 1955

G. S. 105-291 permits a Board of County Commissioners to employ expert assistance to aid in valuing property for tax purposes.

TAXATION; AD VALOREM TAXATION; REVALUATION; POSTPONED

4 March 1955

Although a series of amendments to G. S. 105-278, authorized at succeeding sessions of the General Assembly, authorized the postponement of real property revaluation, it is a common practice to secure the enactment of local legislation when revaluation is contemplated.

TAXATION; AD VALOREM TAXES; REVALUATION IN OFF YEAR;
DECLINE OF NEIGHBORHOOD

13 April 1956

The Board of Equalization and Review has no authority, in a non-revaluation year, to reduce the valuation of property solely on the basis of the decline of a neighborhood. The County Commissioners of New Hanover County are probably not required to meet on every Monday, although the statute is not clear.

TAXATION; AD VALOREM TAXATION; SERVICEMAN; RESIDENT OF
NORTH CAROLINA

14 December 1955

In the absence of a definite change of residence, a serviceman remains a resident of his home state while he is serving in the armed forces. Thus he is liable to his home state for ad valorem taxes on his personal property.

TAXATION; AD VALOREM TAXES; SITUS OF PERSONAL PROPERTY;
AUTOMOBILE; USE IN BUSINESS IN CITY

31 January 1956

A resident of a county maintains his home outside of the city limits. He uses his personal automobile in connection with his business as an insurance agent. He maintains an office within the city limits. Under these circumstances, the city is not entitled to collect ad valorem taxes on the automobile.

TAXATION; AD VALOREM TAXATION; SITUS OF PERSONAL PROPERTY;
LEASED TRUCK-TRACTOR

16 January 1956

Under the particular facts presented, a truck-tractor is required to be listed for ad valorem tax purposes in the town where the lessee thereof uses the vehicle in connection with a warehouse located in the town.

TAXATION; AD VALOREM TAXES; SPECIAL PURPOSES; HOME AGENT

2 September 1954

Special statutory authorization for a tax levy to defray the salary and expenses of a farm demonstration agent would not constitute special statutory authorization for a levy to defray the salary and expenses of a home agent.

TAXATION; AD VALOREM TAXES; SPECIAL PURPOSES; HOME AGENT;
NON-TAX FUNDS

30 June 1955

In the absence of specific statutory authority, a county is not authorized to levy a property tax for the support of a county Home Agent or county Home Agent's department. Such an office or department could be supported out of non-tax revenues not otherwise allocated by statute to other specific purposes.

TAXATION; AD VALOREM TAXATION; SPECIAL PURPOSES; REPAIR AND
CONSTRUCTION OF COURT HOUSE AND JAIL

18 July 1955

In the absence of special enabling legislation, the only special tax authorized by general law for remodeling or constructing a court house and jail, other than when a bond issue is contemplated, is that contained in G. S. 153-9 (6) which authorizes a levy not in excess of 5c per \$100.00 valuation for such purpose.

TAXATION; AD VALOREM TAXATION; STATUTE OF LIMITATIONS;
DUPLIN COUNTY

14 March 1955

The adoption of an amendment exempting Duplin County and the political subdivisions thereof from G. S. 105-422 which provides a ten-year

statute of limitations with respect to certain taxes does not have the effect of reviving any municipal tax claims within Duplin County which had theretofore been barred by said G. S. 105-422 before the Duplin County exemption was enacted.

**TAXATION; AD VALOREM TAXATION; TAX FORECLOSURE; NOTICE; NO
AUTHORITY TO USE SUBSTITUTE FOR REGISTERING LETTER OF NOTICE**

4 August 1955

The use of "certified mail" in lieu of a registered letter would not constitute adequate compliance with G. S. 105-392, relating to tax foreclosures, inasmuch as said statute requires the notice therein provided for to be sent by registered mail.

**TAXATION; AD VALOREM TAXES; TAX SITUS; PERSONAL PROPERTY OF
CORPORATION**

19 October 1955

If personal property belonging to a foreign corporation has a situs in this State for ad valorem tax purposes, it should be listed at the place of the principal office of the corporation in this State. If the corporation has no principal office in this State, then the property should be listed where it is situated. However, if the tangible personalty is used in connection with one of the establishments listed in Subsection (4) of G. S. 105-302, then the property should be listed where such establishment is located.

**TAXATION; AD VALOREM TAXATION; TAX SITUS IN STATE;
TEMPORARY LOCATION**

7 October 1955

Personal property belonging to a foreign corporation which has no principal office in this State shall be listed for ad valorem tax purposes where the property is situated, provided the property has a taxable situs in this State. However, if the property is used in connection with one of the establishments listed in Subsection (4) of G. S. 105-302, the property should be listed where such establishment is located.

TAXATION; AD VALOREM TAXES; TEMPORARY STORAGE IN WAREHOUSE

8 November 1955

Merchandise stored in a warehouse pending the filling of orders for such merchandise and which is in the warehouse on January 1st is subject to ad valorem taxes where the warehouse is located. G. S. 105-302.

TAXATION; AD VALOREM TAXATION; TENANCY IN COMMON; VALUATION

4 February 1955

A clerical error in the Tax Supervisor's Office in transcribing a property valuation whereby an amount smaller than the proper amount was transcribed does not absolve the taxpayer of liability with respect to the full tax due with respect to the proper valuation.

TAXATION; AD VALOREM TAXATION; VALUATION; EMPLOYMENT OF EXPERTS

11 May 1956

The taxing authorities of a county may employ experts to aid and assist the county supervisor of taxation and the list takers and assessors in the several townships of the county, or to advise with, aid and assist the Board of Equalization and Review in arriving at the true value in money of the property in the county.

The experts so employed need not be residents of the State, and they may be persons, firms or corporations. The authority given applies to all property in the county regardless of its class.

TAXATION; AD VALOREM TAXATION; WHEN TAX LIEN ATTACHES

11 October 1954

Liability for ad valorem taxation of property for any one year attaches as of January 1st of such year.

TAXATION; FEDERAL JURISDICTION OVER NORTH CAROLINA LANDS

4 April 1955

Under G. S. 104-7, the State of North Carolina cedes exclusive jurisdiction to the Federal government over land acquired by the Federal government, but such statute is not operative until such jurisdiction is accepted by the Federal government with respect to the property involved. Under Title 4, Sections 104 through 110 of the United States Code, known as the Buck Amendments, income tax, gasoline taxes and sales and use taxes may be collected on ceded areas in the same manner and to the same extent as if jurisdiction with respect thereto had not been ceded to the Federal government.

TAXATION; CORPORATIONS; FOREIGN DOMESTICATION; DOING BUSINESS;
CONSIGNMENTS

5 March 1956

Normally, making consignment shipments into the State does not by itself constitute doing business. However, maintenance in this State by a foreign corporation of a stock of goods from which sales are made to the account of the foreign corporation does constitute doing business, even though the business transactions are designated as "consignments".

TAXATION; FRANCHISE TAX; CORPORATIONS; EXEMPTIONS

4 August 1955

A housing corporation which finances through a Federal agency a construction of a large housing project, and contracts with its own members to sell them apartments or other units in the project for which the members make monthly payments sufficient in total to cover the corporation's payments to the Federal Government, expenses, utility services, insurance, taxes, and the accumulation of a reserve, is not exempt from the franchise tax.

TAXATION; FRANCHISE TAXES; DOING BUSINESS; CONSIGNMENT SHIPMENTS

19 June 1956

True consignment transactions between an out-of-state consignor and an in-state consignee do not constitute "doing business" on the part of the out-of-state consignor, for purposes of the franchise and income tax articles.

TAXATION; FRANCHISE TAX; INCOME TAX; AGENCY OF WISCONSIN OWNING
LAND IN NORTH CAROLINA

17 May 1955

It is doubtful that another state or its agency may acquire title to land in North Carolina without the consent of the North Carolina Legislature. An agency of another state, declared by its law to be a corporation, organized for the purpose of investing state funds and controlled entirely by the state, has no greater power to acquire land in North Carolina than does the creating state. Such corporation would be doing business in North Carolina if it purchases North Carolina real estate and leases it back to the seller. It would have to domesticate in North Carolina and would be subject to the regular foreign corporation franchise and income taxes.

TAXATION; GARNISHMENT OF WAGES; PERCENTAGE ALLOWABLE

23 November 1955

Section 1713 (d) of the Machinery Act (G. S. 105-385) with respect to ad valorem taxes, and Section 913 of the Revenue Act (G. S. 105-242) with respect to State taxes each provide that not more than 10% of wages be taken from any payroll period through garnishment proceedings.

TAXATION; GASOLINE TAXES; EXEMPTIONS; AUTOMOBILES FURNISHED
SUPERINTENDENTS

8 June 1955

In view of the narrow language of the statutory gasoline tax exemptions (G. S. 105-449), which must be strictly construed against any person claiming an exemption, it is my opinion that gasoline sold for use in school activity buses, bookmobiles and automobiles furnished to county superintendents of public schools is not exempt from the State gasoline tax.

TAXATION; GASOLINE TAX; EXEMPTIONS; CITY SCHOOL UNIT

14 July 1955

Gas bought by a city administrative unit to be used in a truck which is used solely for city school maintenance work is not exempt from the State gasoline tax.

TAXATION; GENERAL ADMINISTRATION; CERTIFICATES OF TAX LIABILITY

12 August 1954

When a certificate of tax liability has been docketed and remains unsatisfied for ten years from the date of its docketing, it becomes unenforceable and the tax represented thereby is automatically abated by statute.

TAXATION; GENERAL ADMINISTRATION; COPIES OF RETURNS

28 July 1955

Although it is deemed a wise business practice for a taxpayer to retain for a reasonable time copies of tax returns filed with the State, the statutes do not require a taxpayer to retain copies of returns.

TAXATION; GENERAL ADMINISTRATION; SECRECY PROVISIONS

14 July 1954

The prohibition in G. S. 105-259 against making known "the amount of income, income tax or other taxes" disclosed in a tax report or tax return, does not prevent the Department of Revenue from disclosing to a county tax supervisor the amount of inventory of goods, for example, which a taxpayer had reported.

TAXATION; INCOME TAXES; ADMINISTRATION; COLLECTION; FEDERAL
EMPLOYEE RESIDING WITHIN A FEDERAL AREA

15 November 1955

A Federal statute, 4 USCA Sec. 106 (a), grants to the States the same authority to levy or collect income taxes from Federal employees residing within a Federal area as the State officials may possess in the case of other citizens residing in the State; and therefore the sheriff of a county has the authority to enter upon the grounds of a Veterans Administration Hospital and execute against an automobile owned by a Federal employee, under a tax judgment duly docketed against the Federal employee.

TAXATION; INCOME TAXES; CONSENT DIVIDENDS; INCOME TO STOCKHOLDER

16 September 1955

A consent dividend is taxable income to the shareholder, under the North Carolina Revenue Act.

TAXATION; INCOME TAXES; DEDUCTIONS; CASUALTY LOSSES;
VALUE DECREASE

21 September 1955

Real property in the vicinity of the taxpayer's real property was damaged by a recent hurricane. As a result, the taxpayer's property decreased in value, although the hurricane did not inflict directly any damage on the taxpayer's property. The taxpayer cannot claim a casualty loss deduction, for income tax purposes, on account of such decrease in value.

TAXATION; INCOME TAXES; DEDUCTIONS; CASUALTY LOSSES OUTSIDE
NORTH CAROLINA

22 November 1954

A casualty loss suffered by a North Carolina resident outside this State is deductible for State income tax purposes unless said loss was claimed

and used to decrease income taxes in the State where the loss occurred and, even in such case, is deductible in this State, if there was no taxable income in the foreign state.

TAXATION; INCOME TAXES; DEDUCTIONS; CHARITABLE CONTRIBUTIONS;
CHARITABLE TRUST

22 May 1956

A charitable trust does not constitute a charitable corporation for the purpose of the income tax exemption statute. Nor is it an organization for the purpose of obtaining an exemption from intangibles tax. However, the trust is not subject to the franchise tax, and contributions to the trust are deductible for income tax purposes.

TAXATION; INCOME TAX; DEDUCTIONS; CONTRIBUTIONS TO STATE COLLEGE
STUDENT AID ASSOCIATION, INC.

28 July 1955

Contributions to State College Student Aid, Inc. are deductible for State income tax purposes as contributions to other charitable organizations. Deductions of contributions to charitable, religious, and educational associations are limited to five per cent of the taxpayer's net income in the case of a corporation or partnership donor, and to fifteen per cent of the taxpayer's net income in the case of an individual donor.

TAXATION; INCOME TAX; DEDUCTIONS; DEPRECIATION; FEDERAL RULES

7 February 1955

Section 322 (8) of the Revenue Act does not require or permit the Department of Revenue to use the "declining balance" method or the "sum of the digits" method in computing the deduction for depreciation, even though the 1954 Federal Internal Revenue Code permits these to be used for Federal income tax purposes. Circumstances of a particular case may justify the Department's use of any given method in computing a "reasonable allowance" for depreciation.

TAXATION; INCOME TAX; DEDUCTION; INTEREST PAID BY SUBSIDIARY AND
GUARANTEED BY PARENT

21 July 1955

The general principle that interest paid by a subsidiary corporation on indebtedness guaranteed by a parent corporation may not be deducted for income tax purposes is modified to a certain extent by the statutory pro-

vision that a subsidiary may deduct from its gross income interest paid to the parent corporation in such proportion as the borrowed capital of the parent corporation is to the total assets of such parent corporation.

TAXATION; INCOME TAX; DEDUCTION; INTEREST PAID BY SUBSIDIARY AND
GUARANTEED BY PARENT

19 July 1955

Interest paid by a subsidiary corporation on indebtedness guaranteed by the parent corporation is not deductible for State income tax purposes even though the parent corporation is a foreign corporation and does no business in this State.

TAXATION; INCOME TAX; DEDUCTIONS; LIGHT BILL

22 March 1955

No deduction for income tax purposes of bills for consumption of electricity for non-business purposes is permitted by the Revenue Act. A municipality has no authority to levy a tax on the consumption of electricity. Calling a part of the bill a "tax" will not permit the consumer of electricity to deduct that portion of the bill in computing his income tax liability.

TAXATION; INCOME TAX; DEDUCTION; LOSS ON FORFEITURE OF OPTION

19 September 1955

Forfeiture of an option to purchase investment property gives rise to a deductible expense under North Carolina Income Tax Law.

TAXATION; INCOME TAXES; DEDUCTIONS; NET ECONOMIC LOSS;
APPLICATION OF RATIO

13 September 1955

The amount of net economic loss which may be carried over as a deduction under Section 322 (6) of the Revenue Act is limited to the proportion of such loss determined by applying to the net economic loss everywhere the allocation ratio for the year in which the loss is incurred.

TAXATION; INCOME TAXES; DEDUCTIONS; TAXES PAID TO GREAT BRITAIN BY
NORTH CAROLINA BENEFICIARY OF FOREIGN TRUST

27 September 1954

A North Carolina beneficiary of a foreign trust is not entitled to deduct from her net income the income received from the trust, even though

income taxes have been paid on the trust income to the state or nation in which the trust is located.

TAXATION; INCOME; DEDUCTIONS; PAYMENT FOR INTEREST
IN INSURANCE AGENCY

9 February 1955

When one partner buys the other partner's interest in the firm, payments by him to the retiring partner for the retiring partner's share of the good will of the firm are capital expenditures and are not deductions from the purchaser's gross income. Interest paid to the retiring partner would be deductible.

TAXATION; INCOME; DEDUCTIONS; PAYMENTS TO WIDOW OF
DECEASED EMPLOYEE

21 July 1955

Payments by a corporation to the widow of a deceased employee may not be deducted for income tax purposes by the corporation when the payments constitute a gratuity and are not includable in the income of the widow.

TAXATION; INCOME TAXES; DEDUCTIONS; PREMIUMS ON PARTNERSHIP
LIFE INSURANCE

15 June 1955

Payments of premiums by a partnership on cross-purchase partnership insurance policies are not deductible as ordinary and necessary expenses of the partners. Generally speaking, the proceeds of such a policy received on the death of a partner are not includable in the gross income of the beneficiary. The opinion also discusses the question of whether such proceeds are includable in the gross estate of the deceased partner for the purpose of determining inheritance taxes due on his death.

TAXATION; INCOME TAX; DEDUCTIONS; RESIDENT MEMBER OF NEW YORK
PARTNERSHIP; NONRESIDENT WITH NORTH CAROLINA INCOME

21 March 1955

A resident of North Carolina who reports income earned in another state from a partnership doing business there may claim his full non-business deductions under Section 322 of the Revenue Act. Such taxpayer may also claim his full personal exemption under Section 324 unless he has claimed a deduction for income earned in another state under

Section 325. A nonresident who has income from sources in North Carolina may deduct therefrom only those expenses and other deductions attributable to the cost of earning such income, and may not deduct personal items, such as contributions to charity even though paid with funds received from the North Carolina source.

TAXATION; INCOME TAXES; DEDUCTIONS; SHORT-TERM LOSSES;
CARRY-OVER LOSS

31 March 1955

This opinion discusses the limitations on the net economic loss carry-over deductions arising from transactions in commodity futures or in corporate shares or bonds of corporations or governments owned less than one year.

TAXATION; INCOME TAXES; DEDUCTIONS; SUPPORT FOR WIFE;
NO COURT ORDER OR WRITTEN AGREEMENT

25 October 1955

When a husband and wife live separate and apart, the husband is not entitled to the \$2,000 exemption provided by Section 324 (b) of the Revenue Act. Support money furnished the wife by the husband is not a deduction under Section 322 (14) unless such money is paid pursuant to the terms of the divorce decree or a written separation agreement.

TAXATION; INCOME TAXES; DOMESTIC CORPORATIONS; DEDUCTION FOR
INCOME EARNED IN ANOTHER STATE; GROSS RECEIPTS TAX

14 September 1955

A domestic corporation required to pay franchise tax to another state in which it earns income is not entitled to a deduction under Section 322 (10) (a) for the amount of such tax, when such franchise tax is levied on gross receipts rather than on net income.

TAXATION; INCOME TAX; EXEMPTIONS; CHARITABLE TRUST; DEDUCTIONS;
FRANCHISE TAX; INTANGIBLES TAX

22 May 1956

A charitable trust does not constitute a charitable corporation for the purpose of the income tax exemption statute. Nor is it an organization for the purpose of obtaining an exemption from intangibles tax. However, the trust is not subject to the franchise tax, and contributions to the trust are deductible for income tax purposes.

TAXATION; INCOME TAXES; EXEMPTIONS; HEAD OF HOUSEHOLD

12 September 1955

In order for a wife to claim the head of the household deduction under G. S. 105-149, she must either establish that she is in fact head of the household due to her husband's physical or mental inability to work or failure to work or she must come within the proviso to G. S. 105-149 (1) (b). Nothing else appearing, the mere fact that she furnishes more than one-half of the family support does not entitle her to this exemption.

TAXATION; INCOME TAX; EXEMPTIONS; MARRIED WOMAN;
DEPENDENT CHILDREN

15 July 1954

A wife living with her husband may not claim their children as dependents if the husband has a gross income of \$500.00 or more.

TAXATION; INCOME TAX; EXEMPTIONS; MARRIED WOMAN;
DEPENDENT CHILDREN

27 July 1954

The provision in the income tax law limiting the exemption for dependent children to the person entitled to claim the \$2,000 exemption allowed to a married man or the head of a household, and thus denying such exemption to a married woman living with her husband, he making more than \$500 per year, is a valid statutory provision.

TAXATION; INCOME TAX; EXEMPTIONS; MARRIED WOMAN WITH
INDEPENDENT INCOME

3 March 1955

The Constitution requires that a married woman with an independent income be granted a personal exemption for income tax purposes in an amount of not less than \$1,000.

TAXATION; INCOME TAX; EXEMPTIONS; MILITARY INCOME;
NATIONAL GUARD PAY

20 September 1954

Income earned by a person as a member of the armed forces while on active duty is exempt from the State income tax.

TAXATION; INCOME TAX; EXEMPTIONS; PERSON LIVING ON FEDERAL
AREA NOT EXEMPT

10 January 1955

The fact that a civilian resides on a Federal area within this State does not exempt such person from the State income tax. Special taxation is expressly authorized by Title 4, Section 106 of the United States Code.

TAXATION; INCOME TAX; EXEMPTIONS; UNITED STATES HOUSING NOTES;
UNITED STATES HOUSING BONDS

14 July 1955

United States housing notes and United States housing bonds which are obligations of the Federal government are exempt from the State intangibles tax and interest thereon is exempt from the State income tax.

TAXATION; INCOME TAX; EXEMPTIONS; CAROLINA COUNTRY CLUB,
WAKE COUNTY, NORTH CAROLINA

14 July 1955

The Carolina Country Club, Wake County, North Carolina, is not subject to State income or franchise tax.

TAXATION; INCOME TAXES; EXEMPTIONS; CHARITABLE TRUST

22 May 1956

A charitable trust does not constitute a charitable corporation for the purpose of the income tax exemption statute. Nor is it an organization for the purpose of obtaining an exemption from intangibles tax. However, the trust is not subject to the franchise tax, and contributions to the trust are deductible for income tax purposes.

TAXATION; INCOME TAX; EXEMPTIONS; COMMUNITY "LITTLE THEATER"
ORGANIZATION; G. S. 105-138 (6)

30 April 1956

A community "Little Theater" which is organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, with no part of its net earnings inuring to the benefit of any private stockholder or member, is exempt from State income taxes.

**TAXATION; INCOME TAX; EXEMPT CORPORATIONS; SUNDAY SCHOOL OF THE
SOUTHERN BAPTIST CONVENTION**

11 March 1955

The Sunday School of the Southern Baptist Convention is a religious or educational corporation not operated for profit and is exempt from the franchise tax and the income tax by Sections 213 and 314 of the Revenue Act.

TAXATION; INCOME TAX; EXEMPTIONS

24 August 1954

A nonprofit development corporation organized and operated for the purpose of attracting new industry to a town is exempt from the State franchise and income tax.

TAXATION; INCOME; EXEMPTIONS; HEAD OF THE HOUSEHOLD; GROSS INCOME

12 August 1955

In determining the "gross income" of a husband for purposes of deciding whether his wife may claim the \$2,000 exemption as head of the household, the basic rule is that gross income is the figure from which all deductions allowed by Section 322 are subtracted.

**TAXATION; INCOME TAXES; EXEMPTIONS; HUSBAND
NOT LIVING WITH WIFE**

25 October 1955

When a husband and wife live separate and apart, the husband is not entitled to the \$2,000 exemption provided by Section 324 (b) of the Revenue Act. Support money furnished the wife by the husband is not a deduction under Section 322 (14) unless such money is paid pursuant to the terms of the divorce decree or a written separation agreement.

TAXATION; INCOME; EXEMPTIONS; INDIANS ON RESERVATION

13 June 1955

Indians receiving income on reservations in this State are liable for North Carolina income taxes on such income.

**TAXATION; INCOME; EXEMPTIONS; LAW ENFORCEMENT OFFICERS'
BENEFIT AND RETIREMENT FUND**

19 October 1955

Retirement allowance payments from the Law Enforcement Officers Benefit and Retirement Fund are taxable income.

TAXATION; INCOME; EXEMPTIONS

13 February 1956

A cooperative breeding association organized under Subchapter (5) of Chapter 54 of the General Statutes is entitled to the conditional income tax exemption provided by Paragraph (9) of G. S. 105-138. Such cooperative is subject to income tax on any net income not allocated to patrons on a patronage basis and distributed either in cash, stock, certificates or in some other manner which discloses to each patron the amount of his patronage refund.

TAXATION; INCOME; EXEMPTIONS; MILITARY SERVICE PAY; END OF WAR

23 September 1955

For purposes of G. S. 105-141, which allows exemption of salary compensation of members of the armed forces "during the continuance of the second World War," as amended by Act of 1953 General Assembly extending this exemption to veterans of the Korean conflict, such exemption terminates as of January 31, 1955, by reason of Executive Order No. 10585, promulgated by President Eisenhower, which terminates combatant activities in Korea. Therefore, from and after February 1, 1955, compensation received for service in the armed forces should be reported for State income tax purposes.

**TAXATION; INCOME TAX; EXEMPTIONS; NON-RESIDENT
EARNING INCOME IN NORTH CAROLINA**

21 March 1956

(1) Any non-resident individual earning income in North Carolina is entitled to all allowable deductions under Section 322 to the extent that such deductions are connected with income arising from sources within the State, that is, such deductible expenses as are incurred in earning the income in this State.

(2) A non-resident individual owning an established business or who is a partner in an established business in this State is allowed deductions under Section 322 to the extent that they are connected with income earned

in this State, *and, in addition*, such individuals are entitled to all *other* deductions allowed in the Revenue Act. Such other deductions are authorized on a pro rata basis; that is, in the proportion that the non-resident individual's gross income earned within this State bears to his total gross income for the same period earned both within this State and in his state of residence. In substance, this means that the non-resident individual owning an established business or who is a partner in an established business in this State is entitled to all deductions which are connected with income earned in this State, and, in addition, is authorized non-business deductions in the proportion that his gross income earned within this State bears to the total gross income earned both in North Carolina and in his resident state.

(3) A non-resident individual earning income within this State is entitled to the exemptions authorized under Section 324 in proportion that his gross income earned within this State bears to the total gross income earned both within and without this State; provided, that a non-resident individual who claims no deduction because of income earned outside North Carolina is entitled to the full exemptions provided in Section 324.

TAXATION; INCOME; EXEMPTIONS; RESIDENT

24 March 1955

Where a resident earns income in this and in another state and is allowed a deduction because the other state taxes the portion of the income earned there, he may claim only the same proportion of the normal personal exemptions in this state.

TAXATION; INCOME; EXEMPTIONS; RESIDENT MEMBER OF NEW YORK PARTNERSHIP; NONRESIDENT WITH NORTH CAROLINA INCOME

21 March 1955

A resident of North Carolina who reports income earned in another state from a partnership doing business there may claim his full non-business deductions under Section 322 of the Revenue Act. Such taxpayer may also claim his full personal exemption under Section 324 unless he has claimed a deduction for income earned in another state under Section 325. A nonresident who has income from sources in North Carolina may deduct therefrom only those expenses and other deductions attributable to the cost of earning such income, and may not deduct personal items, such as contributions to charity even though paid with funds received from the North Carolina source.

TAXATION; INCOME; EXEMPTIONS; WIFE CLAIMING \$2,000 EXEMPTION; "GROSS INCOME"

6 July 1955

For purposes of determining the wife's right to a \$2,000 exemption, the

husband's "gross income" from a mercantile business is the difference between his gross receipts from sales and the cost of the goods sold.

TAXATION; INCOME TAX; EXPENSE ALLOWANCE; GOVERNOR

13 January 1955

Where an employee, including a State official, is given an expense allowance or reimbursement for expenses incurred in performing the duties of his employment, such expense allowance or reimbursement should be added to gross income and the actual expense incurred should be claimed as a deduction in computing such person's income tax liability.

TAXATION; INCOME TAXES; FRANCHISE TAXES; FOREIGN CORPORATION;
DOING BUSINESS; APPOINTMENT OF PROCESS AGENT

8 September 1955

The mere appointment by a foreign corporation of a process agent for the purpose of meeting the requirements of Subsection (c) of G. S. 55-38.1, as amended in 1955, does not constitute doing business in North Carolina within the meaning of the Franchise and Income Tax Articles. Any additional activity, however, might constitute doing business.

TAXATION; INCOME TAX; FOREIGN CORPORATIONS; DOING BUSINESS;
PENSION TRUSTS

7 December 1954

When a foreign corporation buys a manufacturing plant in North Carolina and executes a lease-back contract with the seller, such corporation is doing business in North Carolina. A foreign bank may not be admitted to do business in North Carolina. The exemption of a pension trust from income tax liability under the Federal law is prima facie basis for such exemption under the State law but is not conclusive.

TAXATION; INCOME TAXES; FOREIGN CORPORATIONS; DOING BUSINESS;
SALES FACTOR; N. C. INVENTORY; SHIPMENTS OUT OF STATE

13 September 1955

A foreign corporation maintaining a warehouse inventory in North Carolina, with shipments being made directly from the inventory, is doing business in North Carolina for income tax purposes. Sales made through the North Carolina warehouse should be included in the sales factor, whether those sales are made to North Carolina merchants or to merchants outside of North Carolina.

TAXATION; INCOME TAXES; FOREIGN CORPORATIONS; DOMESTICATION;
SELLING FROM INVENTORY MAINTAINED IN STATE

28 October 1955

A foreign corporation which maintains in this state an inventory of goods from which sales are made is "doing business" in this state and is required to domesticate.

TAXATION; INCOME TAXES; GROSS INCOME; JURISDICTION TO TAX;
INCOME EARNED IN FOREIGN COUNTRY

7 March 1955

A North Carolina resident receiving salary for personal services rendered in Iceland is required to report the income and pay tax on it to North Carolina unless he is required to pay income tax to Iceland on this salary.

TAXATION; INCOME; FOREIGN CORPORATION; UNITARY BUSINESS; INTEREST
ON FEDERAL TAX REFUNDS; PROFIT FROM DEALING IN COTTON FUTURES

24 November 1954

When a corporation purchases the assets of another corporation including a claim for income tax refund from the United States, the selling corporation not doing business in North Carolina, interest on such tax refunds is not part of the purchasing corporation's unitary income and should not be included in computing the purchasing corporation's income tax liability to North Carolina.

Income from transactions in cotton futures engaged in by a foreign corporation operating cotton mills in North Carolina is part of its unitary income notwithstanding a statement that the particular transaction was engaged in by speculation and not for hedging.

TAXATION; INCOME; GROSS INCOME; ANNUITIES; CIVIL SERVICE
RETIREMENT FUND; PAYMENTS TO WIDOW

20 July 1955

Annuity payments made by the Civil Service Retirement System to the widow of a deceased employee of the Federal Government are subject to

the North Carolina income tax. The payments are reportable under the annuity rule contained in Section 317 of the Revenue Act. The cost basis is the amount contributed to the System by the deceased employee.

**TAXATION; INCOME TAXES; GROSS INCOME; CAPITAL GAINS DISTRIBUTION;
TAXABILITY TO RECIPIENTS**

14 September 1955

The North Carolina revenue law makes no special provision for long term capital gains, such income being reported as ordinary income, and where there is distribution of capital gains by a regulated investment company, either in cash or in stock at the option of the shareholder, such distribution must be reported as income under the law of this State.

**TAXATION; INCOME; GROSS INCOME; DAMAGES RECEIVED FOR LOSS OF
BUSINESS DUE TO LIBEL**

14 July 1955

The sum of money recovered by a business firm by reason of compromise of a libel suit seeking damages for loss of business must be included in gross income for State income tax purposes.

**TAXATION; INCOME; GROSS INCOME; EMPLOYEES' ACCIDENT, HEALTH AND
WELFARE TRUST; EMPLOYER CONTRIBUTIONS AS INCOME TO EMPLOYEES**

21 November 1955

Payments made by employers to the Boilermakers National Health and Welfare Fund for the purpose of procuring hospitalization insurance for employees are paid as compensation and constitute gross income to the employees.

**TAXATION; INCOME; GROSS INCOME; EXCLUSIONS;
HEALTH AND SICK LEAVE PLAN**

17 February 1956

Hospital and medical care payments made under an employees' benefit plan of the named company constitute gross income to the employees receiving the payments. Temporary disability benefits paid under the plan likewise constitute gross income to the employees.

TAXATION; INCOME; GROSS INCOME; FELLOWSHIPS

12 July 1955

The test of whether a fellowship award to a graduate student is taxable income is whether in return for the award the recipient performs personal

services or merely pursues his training in the same way as any student who does not receive such award.

TAXATION; INCOME; GROSS INCOME; FELLOWSHIP

13 June 1955

A fellowship or scholarship grant is taxable income if the recipient performs for the institution some service he would not otherwise be obligated to perform and which the institution would have to employ someone else to perform if he were not available. If the recipient performs no service but is in all respects like a student who pays his entire fees with his own funds, such grant is a gift and is not taxable under Section 317 of the Revenue Act.

**TAXATION; INCOME; GROSS INCOME; GRATUITOUS PAYMENT
TO WIDOW OF EMPLOYEE**

18 March 1955

A gratuitous payment made by a corporation to the widow of a deceased employee does not constitute income to the widow, providing the payment is in actuality a gift and providing the corporation does not have a regular practice of making such gifts to the widows of deceased employees and the payment was not made pursuant to any provisions, either written or oral, of the contract of employment between the corporation and the deceased employee. If such payments have occurred with such frequency as to permit the conclusion that their making is a regular practice, the payment would constitute gross income to the recipient.

**TAXATION; INCOME; GROSS INCOME; INVOLUNTARY CONVERSION,
SECTION 319½ OF THE REVENUE ACT**

22 March 1956

A taxpayer who owns stock in a corporation owning race tracks in New York, which corporation is ordered dissolved under recent legislation in New York, with the stockholders forced to accept the offer of a set price for their stock or undergo condemnation proceedings, sustains an involuntary conversion within the meaning of Section 319½ (G. S. 105-144.1) of the Revenue Act. After selling such stock, which was held for investment purposes, the taxpayer invested the money received in the stock of other various corporations not necessarily engaged in race track activities. Under these facts, the taxpayer has acquired "other property similar or related in service or use to the property so converted" for purposes of Section 319½; and under this section no taxable gain is realized on the sale of the race track stock.

**TAXATION; INCOME TAX; GROSS INCOME; PAYMENT FROM SURPLUS TO
SINGLE STOCKHOLDER NOT A DIVIDEND**

8 June 1955

When a member of a closely-held corporation retires, is paid the par value of his stock, representing his investment in the corporation, and in addition is paid his share of the accumulated surplus, based upon his equity in the corporation, such payment of a share of the surplus does not constitute a dividend within the meaning of Subsection (5) of G. S. 105-147 (Section 322 of the Revenue Act), which permits for State income tax purposes the deduction of dividends to the extent of the proportion that said corporate income has been subject to State income taxation.

**TAXATION; INCOME; GROSS INCOME; PENSION RECEIVED BY
DISABLED VETERAN**

9 March 1956

A veteran of World War I, or a veteran who was in military service at any time between December 7, 1941 and January 31, 1955, and who is receiving a pension or compensation "for or on account of wounds or physical disabilities contracted or sustained" during such military service is not required to pay North Carolina income tax on such pension or compensation.

**TAXATION; INCOME; GROSS INCOME; PREMIUMS ON EMPLOYEE'S
GROUP INSURANCE**

24 April 1956

When an employer pays the premium on an insurance policy for the benefit of an employee, payment of such premiums constitutes gross income to the employee.

**TAXATION; INCOME TAXES; GROSS INCOME; PROCEEDS OF
PARTNERSHIP LIFE INSURANCE**

15 June 1955

Payments of premiums by a partnership on cross-purchase partnership insurance policies are not deductible as ordinary and necessary expenses of the partners. Generally speaking, the proceeds of such a policy received on the death of a partner are not includable in the gross income of the beneficiary. The opinion also discusses the question of whether such pro-

ceeds are includable in the gross estate of the deceased partner for the purpose of determining inheritance taxes due on his death.

**TAXATION; INCOME; GROSS INCOME; RECOGNITION OF GAIN OR LOSS;
EXCHANGE OF STANDING TIMBER FOR REAL PROPERTY**

24 November 1954

An exchange of the right to cut and remove standing timber for farm land and woodland is an exchange of property of like kind within the meaning of Section 320 of the Revenue Act and the gain from the exchange is excludable from the gross income.

**TAXATION; INCOME; GROSS INCOME; REPORTING CASH PAYMENT
RECEIVED BY MINISTER FOR HOUSE RENT**

15 November 1955

Under G. S. 105-141 (f), the rental value of a dwelling furnished to a minister of the gospel as part of his compensation may be excluded for income tax purposes; but a cash payment to a minister of the gospel who is entitled a rental allowance may not, under G. S. 105-141 (f), be excluded by the minister in reporting income for State tax purposes.

**TAXATION; INCOME; GROSS INCOME; REPORTING SALARY EARNED BY
DECEDENT BEFORE HIS DEATH AND PAID TO HIS ESTATE**

21 March 1956

Income earned by a decedent but not received, either actually or constructively, prior to the decedent's death should be treated as an account receivable to the estate and reported for inheritance tax purposes. But such amounts are not subject to North Carolina income tax.

TAXATION; INCOME; GROSS INCOME; RETIREMENT BENEFITS

10 February 1955

Where an employee contributes to a retirement fund, benefits received from such fund are gross income except that only 3% of such benefits are regarded as gross income until the employee has recovered his entire contributions to that fund.

**TAXATION; INCOME; GROSS INCOME; SALE OF REAL ESTATE; REPOSSESSION
OF PROPERTY UPON DEFAULT; REPORTING ON INSTALLMENT BASIS**

18 January 1956

In 1946 the taxpayer acquired certain real property for which he paid \$12,000, and in 1951 when the property had an adjusted basis of \$9,600

(cost less \$2,400 depreciation) the taxpayer sold the property for a total price of \$20,000, which price was paid by the purchaser's transferring to the taxpayer other real property having a net value of \$4,130, and giving the taxpayer a note for the amount of \$15,870, secured by a mortgage on the property sold. In 1953, the purchaser being unable to pay the note when it became due, reconveyed the mortgaged property to the taxpayer as payment for the full amount of the note, thus giving the taxpayer title and possession to the real property for which he had originally paid \$12,000, and in addition giving him title and possession to a parcel of real estate having a cost basis of \$4,130. On these facts, the taxpayer realized a gain of \$10,400 in the taxable year 1951, as it is well settled tax law that the tax consequences of a given transaction are computed on the basis of what took place during the taxable year, without reference to what may have occurred in a subsequent year. The taxpayer may elect to report the entire gain on such transaction for the year in which the transaction was made, or elect to report the gain on an installment basis if the amount of the payments received in the year of sale do not exceed 30% of the selling price.

**TAXATION; INCOME; GROSS INCOME; TAXABILITY OF
DISTRIBUTION IN SPIN-OFF**

3 December 1954

The distribution of the stock of a new corporation to the stockholders of the old corporation as a result of a spin-off reorganization constitutes taxable income to the recipients of the stock.

**TAXATION; INCOME TAX; INTANGIBLES TAX;
NEW HOUSING AUTHORITY BONDS**

10 January 1956

The so-called "New Housing Authority Bonds" are subject to the same tax consequences as the earlier Housing Authority Bonds issued by local housing authorities.

TAXATION; INCOME TAX; LIFE INSURANCE ENDOWMENT CONTRACT

4 April 1955

When an endowment contract with a life insurance company matures and payments are made in accordance therewith to the contract-holder, 3% of such payments must be reported as gross income for state income tax purposes.

**TAXATION; INCOME TAX; NON-RESIDENT; EXEMPTIONS;
CREDIT FOR TAX PAID HOME STATE**

27 September 1955

In determining the exemption allowed an individual whose income is derived partly from this state and partly from another state, the method of computation is to multiply the normal exemption by the gross income in North Carolina and divide the product by the gross income wherever received. In determining the credit allowed on North Carolina income taxes to a resident of another state for income tax paid to that state on North Carolina net income, the method of computation is to multiply the tax paid to the other state by the gross income in North Carolina, and divide the product by the gross income wherever earned.

TAXATION; INCOME TAX; RESIDENT OR NONRESIDENT

20 September 1955

For purposes of the State Income Tax Law a person remains a resident of North Carolina under the following circumstances: Taxpayer separated from his wife while living in North Carolina during the early part of 1946. On or about the first day of August 1946, the taxpayer left the continental limits of the United States as an employee of a construction company, to work in Okinawa. The taxpayer states that when he left for this employment, he had "no intention of specifically returning to the State of North Carolina but rather was on call from his employer and could be sent anywhere throughout the world." The taxpayer remained in Okinawa throughout 1947, returning to the United States in the early part of 1948. Sometime during 1948, the taxpayer returned to North Carolina while still an employee of the construction company. The taxpayer states that before he left North Carolina in 1946 a property settlement had been made with his wife.

**TAXATION; INCOME TAXES; TRUSTS; INCOME NOT
DISTRIBUTABLE DURING INCOME YEAR**

12 April 1956

Where a resident fiduciary has in his hands trust funds held for the benefit of a nonresident beneficiary with power to distribute income to the beneficiary in his discretion and no distribution is made during the income tax year, the income was not distributed or distributable and was therefore taxable to the fiduciary under Section 315 of the Revenue Act.

TAXATION; INHERITANCE TAXES; COMPROMISE; COMPROMISE WITH
OTHER STATES; DISPUTE AS TO RESIDENCE

14 March 1956

The Revenue Act does not authorize the Commissioner to enter into a compromise agreement with other states for the purpose of determining the residence of decedents.

TAXATION; INHERITANCE TAXES; DETERMINATION OF RESIDENCE

11 August 1954

The Inheritance Tax Act does not define the word "resident". Thus, residence for North Carolina inheritance tax purposes is determined under the general principles of case law.

TAXATION: INHERITANCE TAXES; DEVISE FOR USE DURING WIDOWHOOD

14 September 1955

A devise to a widow to hold and use "as she thinks best" during her widowhood, and over to others upon her remarriage, creates only a life estate in the widow for purposes of computing the North Carolina inheritance tax.

TAXATION; INHERITANCE TAXES; GIFT TAXES; EXEMPTIONS;
UNIVERSITY OF NORTH CAROLINA

19 August 1954

The University of North Carolina is exempt from the payment of State income taxes and gifts, devises, and bequests made to it are exempt from the North Carolina inheritance and gift taxes.

TAXATION; INHERITANCE TAXES; GROSS ESTATE;
Co-OWNED GOVERNMENT BONDS

15 February 1955

For the purpose of determining the North Carolina inheritance taxes, co-owned United States Government bonds must be included in the estate of the purchaser, where the bonds were bought with the purchaser's funds and the purchaser had not completed an inter vivos gift of the bonds at the time of his death.

**TAXATION; INHERITANCE; GROSS ESTATE; DEATH BENEFITS;
RIGHT TO DESIGNATE BENEFICIARY**

12 May 1955

The commuted value of death benefits payable under the named corporation's retirement plan on account of the death of an employee must be included in the gross estate of the employee for the purpose of determining the North Carolina inheritance taxes if the employee had any vested interest in the plan. The right of the employee to name the beneficiary is a sufficient vested interest for this purpose.

**TAXATION; INHERITANCE TAXES; GROSS ESTATE; EXCLUSION;
NATIONAL SERVICE LIFE INSURANCE**

12 April 1956

The proceeds from National Service Life Insurance policies are exempt from State inheritance taxes, even though the proceeds go to the estate.

**TAXATION; INHERITANCE; GROSS ESTATE; FEDERAL BOND;
JOINT OWNERSHIP**

12 June 1956

Series "E" war bonds purchased in the name of the decedent "or" another person are includable in the decedent's gross estate unless the evidence clearly shows that a completed inter vivos gift of the bonds was made.

**TAXATION; INHERITANCE TAXES; GROSS ESTATE;
JOINT UNITED STATES BONDS**

26 May 1955

United States Savings Bonds issued in the name of the purchaser or other designated person must be included in the gross estate of the purchaser for determining North Carolina inheritance taxes due on account of the death of the purchaser, unless during the lifetime of the purchaser such bonds were given to the other designated person. However, such bonds are not part of the estate for administration purposes.

TAXATION; INHERITANCE; GROSS ESTATE; NATURE OF OIL LEASE

1 July 1954

Both the lessor's and lessee's interest in an oil lease in Texas constitutes real property and cannot be subject to the North Carolina Inheritance Tax even though the lessor or lessee dies a North Carolina resident.

**TAXATION; INHERITANCE TAXES; LIABILITY OF EXECUTOR,
HEIR AND PURCHASERS**

4 August 1954

Inheritance taxes become a lien on the property transferred. The heir remains liable for the payment of the taxes and any of his property may be sold for such payment.

TAXATION; INHERITANCE TAXES; LIEN; BONA FIDE PURCHASERS

14 September 1955

The lien created by Section 18 of the Inheritance Tax Article continues in effect even though the property has been sold to a bona fide purchaser for value.

**TAXATION; INTANGIBLES TAX; EXEMPTIONS; BONDS OF
RELIGIOUS INSTITUTION NOT EXEMPT**

1 October 1954

A bond issued by a religious organization and held by a private owner is not exempt from the intangibles tax and the interest thereon is not exempt from income tax.

**TAXATION; INTANGIBLES TAX; EXEMPTIONS; EMPLOYEES'
RECREATION TRUST FUND**

21 July 1955

The income of a trust fund designed to provide recreation facilities and promote recreational and social activities for employees of a corporation is tax exempt and the funds of such trust are exempt from the intangibles tax.

TAXATION; INTANGIBLES TAX; NOTICE AND OTHER EVIDENCE OF DEBT

13 December 1954

Loans made by a small loan business are not subject to local ad valorem property taxation, but notes and other evidences of debt are subject to the State intangibles tax pursuant to the provisions of G. S. 105-202.

**TAXATION; INTANGIBLES TAX; OPERATION IN FEDERAL AREA;
FRANCHISE TAX**

11 October 1955

A foreign corporation which conducts its business activity in North Carolina wholly within an area over which the Federal government has exclusive jurisdiction is not liable for State franchise tax on capital stock, surplus and undivided profits. Under the circumstances presented, the accounts receivable and bank deposits of the corporation are not subject to intangibles tax.

TAXATION; INTANGIBLES TAX; PROCEEDS OF INVOLUNTARY CONVERSIONS

10 January 1956

Monies derived from the involuntary conversion of real estate, as through condemnation proceedings, are subject to the intangibles tax, although the real estate which was involuntarily converted into cash had been listed for taxes and taxes paid thereon.

**TAXATION; INTANGIBLES TAX; PURPOSES FOR WHICH TAX MAY BE
EXPENDED; BEER AND WINE TAX; FRANCHISE TAX**

2 June 1955

Intangibles taxes allocated to a municipality must, by statute, be distributed and used in proportion to other property tax levies made for the various funds and activities of the taxing unit receiving the allotment. Beer and wine crown tax revenues distributed to a county or city may be used as any other general or surplus fund of the unit, and, therefore, apparently could be used for any public purpose including non-necessary as well as necessary expenses. No statutory limitation is made with respect to the use of franchise tax funds distributed to a city, and it would appear that such funds could likewise be used for any proper public purpose including non-necessary as well as necessary expenses.

**TAXATION; LICENSE TAX; ATTORNEYS AND DOCTORS; CONTRACTORS;
COLLECTION**

23 August 1955

Municipalities cannot impose privilege license taxes on attorneys and doctors for the privilege of engaging in their professions. A municipality can impose a license tax on contractors and electricians. G. S. 105-54; G. S. 105-91.

TAXATION; LICENSE TAXES; AUTOMOBILES AND SERVICE STATIONS

29 May 1956

When privilege license taxes are based upon the population of the municipality in which the particular licensed business or trade is conducted and the corporate limits are extended so that the population is increased, if an official enumeration is taken before the beginning of the next tax year the new population figures will govern the tax.

**TAXATION; LICENSE TAXES; AUTOMOBILES AND SERVICE STATIONS;
NUMBER OF LICENSES**

25 May 1956

When a county has levied the privilege license taxes permitted under G. S. 105-89 on automobile and service stations, a person desiring to engage in all three of the types of businesses described in the section must procure the privilege licenses required under Subsections 2 to 3 of the section.

**TAXATION; LICENSE TAXES; AUTOMOBILE PARTS;
SALES BY WHOLESALE FROM TRUCK**

18 June 1956

Persons selling automobile parts and accessories from a truck, such sales being made for resale, are subject to a municipal privilege license tax imposed under the provisions of subsection 2 of G. S. 105-89.

**TAXATION; LICENSE TAXES; AUTOMOTIVE AND EQUIPMENT SUPPLY
DEALERS AT WHOLESALE; MOTOR VEHICLE DEALERS**

23 February 1956

One who pays the privilege license tax levied upon motor vehicle dealers under Subsection (3) of G. S. 105-89 is not required to pay the privilege license tax levied upon automotive and equipment supply dealers at wholesale by Subsection (2) if the latter business is carried on at the same location as the business taxed under Subsection (3).

TAXATION; LICENSE TAX; STATE BANKS; NATIONAL BANKS

14 February 1956

A municipality has the authority to impose a privilege license tax on a State bank doing business within the municipality. It cannot impose such a tax on a national bank.

TAXATION; LICENSE TAXES; BICYCLE DEALERS; MODIFIED SMALL BICYCLES

18 June 1956

The privilege license tax applicable to bicycle dealers applies to persons selling small bicycles, even though such bicycles do not have freewheeling or brakes and even though removable extra wheels are attached to the bicycles.

TAXATION; LICENSE TAXES; "BINGO" TAX; AUTHORITY TO MAKE REFUND

19 September 1955

There is no legislative authority for Dare County to refund Bingo license fees paid to the county, although a court order has been issued enjoining the playing of Bingo for prizes or money in that county.

TAXATION; LICENSE TAXES; BONDSMEN

10 February 1955

Section 109½ of the Revenue Act imposes certain license taxes with respect to engaging in the business of furnishing appearance, compliance, or bail bonds.

TAXATION; LICENSE TAX; CALENDAR OR FISCAL YEAR

3 May 1956

Municipal privilege license taxes imposed under the provisions of G. S. 160-56 may be levied on either a calendar year or a fiscal year basis.

TAXATION; LICENSE TAXES; CHAIN STORES

24 May 1956

A municipality may not levy a chain store license tax upon the unit designated by the chain as its principal office or store in this State, but such unit would be liable for other applicable privilege license taxes.

TAXATION; LICENSE TAX; CHAIN STORES; AUTOMOBILE DEALER

26 September 1955

When an automobile dealer maintains a lot for the storage of new automobiles while held for sale and makes no sale and negotiates no sale

on that lot but all sales are made at the dealer's principal establishment across the street from the lot, the lot is not a separate establishment so as to make the dealer liable for the chain store tax imposed by G. S. 105-98, nor for an additional license tax under G. S. 105-89 (3).

TAXATION; LICENSE TAX; CHAIN STORE TAX; PARTNERSHIP AND CORPORATION

31 August 1954

When partners who operate one retail store own a majority of the stock of a corporation which operates a similar retail store, liability for the State chain store tax exists.

TAXATION; LICENSE TAXES; COLLECTING AGENCIES

12 July 1954

Merely soliciting collection accounts through an agent in this State by an out-of-State collection agency does not make such agency subject to a North Carolina license tax when all activities directed toward actual collection of such delinquent accounts are conducted by mail through letters mailed from outside this State.

TAXATION; LICENSE TAXES; COMPANIES INSTALLING INSULATION

25 June 1956

A municipality has the power under G. S. 160-56 to levy a privilege license tax upon persons or firms engaged in the business of installing insulation within the municipality.

TAXATION; LICENSE TAX; CONTRACTORS

7 July 1955

Failure to pay a bidder's tax under G. S. 105-54 would not disqualify a bid by any person, firm or corporation bidding upon the installation of kitchen equipment in a building of a State institution. G. S. 105-54 does not provide for such disqualification. It is the duty of agents of the Department of Revenue to collect all taxes which may be due under said section.

TAXATION; LICENSE TAX; CREDIT BUREAU; COLLECTION AGENCY

18 June 1956

In order for a municipality to impose a privilege license tax on a collecting agency under the provisions of G. S. 105-45, the municipality must

show that the agency is engaged in this activity for a profit. It is not necessary that the agency actually make a profit. It is sufficient for tax purposes if the agency is engaged in the collecting business for at least the partial purpose of making a profit.

TAXATION; LICENSE TAX; DISPENSING MACHINES; MUNICIPALITIES

6 August 1954

A municipality may levy a \$10.00 license tax upon the operator of a cigarette dispensing machine, but no more regardless of number of machines operated. Since the operator is required to procure a State license, the city may treat as the operator of the machine the person who has the State license.

TAXATION; LICENSE TAX; DRINK DISPENSERS

24 August 1954

When a person operates drink dispensers in his own place of business he is liable for the annual tax of \$15.00 per machine but not for the state-wide operator's tax under Section 130½. A person who has permission to operate such dispensers at various points throughout a mill of another is not operating those dispensers in his own place of business and would be liable for the state-wide tax and the tax on each machine.

TAXATION; LICENSE TAX; ELECTRICAL CONTRACTORS; GRANDFATHER CLAUSE

30 August 1954

A person not licensed by the Revenue Department as an electrical contractor in 1937 is not authorized to engage in the business of being an electrical contractor without first passing the examination required by the Board of Examiners of Electrical Contractors.

TAXATION; LICENSE TAX; FORECLOSURE; NECESSARY PARTIES; STATUTE OF LIMITATIONS

19 July 1955

A current owner of real property is a necessary party to a tax foreclosure action to collect taxes thereon becoming due during previous years when a different party owned the property.

TAXATION; LICENSE TAXES; GARNISHMENT PROCEEDINGS

16 December 1955

The \$2.00 process tax levied by G. S. 105-93, Subsection (b) is not chargeable in a tax garnishment proceeding.

**TAXATION; LICENSE TAXES; GYPSIES AND FORTUNE TELLERS;
AMOUNT OF LICENSE**

25 May 1956

There is no limit to the amount of privilege license taxes that counties may impose on gypsies and fortune tellers.

TAXATION; LICENSE TAX; HORSE SHOW; EXEMPTIONS

1 September 1955

A Lions Club must obtain a license under Section 105½ of the Revenue Act for the operation of a horse show, even though the proceeds after expenses and prizes are to be used for the purchase of glasses for school children where such show is not limited to exhibitions by local horses and riders and substantial cash prizes are given to the winners in the various classes.

TAXATION; LICENSE TAX; HOTELS AND MOTELS

6 June 1956

The general power to levy license taxes granted to municipalities under G. S. 160-56 is subject to limitations as to the rate or amount of tax set out in various sections of Schedule B of the Revenue Act.

TAXATION; LICENSE TAXES; ICE CREAM DEALERS

22 August 1955

While it is not entirely clear, it is my opinion that a municipality cannot levy a privilege tax under G. S. 105-97 on a retailer of ice cream who purchases from a manufacturer who has paid the tax under Subsection (a) of G. S. 105-97.

TAXATION; LICENSE TAXES; INSURANCE AGENCY

18 June 1956

There is no State statute imposing a municipal privilege license tax on an insurance agency.

TAXATION; LICENSE TAXES; JUNK DEALERS;
No REGULAR PLACE OF BUSINESS

18 April 1955

A junk dealer who maintains no regular place of business and sells only to licensed dealers or manufacturers cannot be required to pay a privilege license tax to a municipality for the privilege of carrying on such business.

TAXATION; LICENSE TAXES; LAUNDRIES; DRY CLEANERS; SOLICITING

8 April 1955

A person who solicits cleaning work or pressing in any city or town where the cleaning and pressing is done in a plant outside such city or town is not required to secure a State license with respect to such town when there is no cleaning plant, pressing shop, or established agency therefor with a fixed place of business in such town.

TAXATION; LICENSE TAXES; LINEN SUPPLY; COVERALLS, RAGS, ETC.

16 February 1956

A municipality may levy a privilege license tax upon an out-of-town business engaged in supplying or renting clean linen or towels within the town under the provisions of Section 105-85 of the General Statutes.

TAXATION; LICENSE TAXES; MAGAZINE SOLICITATION CREWS

22 November 1954

There are no State license laws regulating the soliciting of magazine subscriptions other than that contained in Section 136 of the Revenue Act relating to conducting contests in order to increase magazine or newspaper subscriptions.

TAXATION; LICENSE TAXES; MARBLE YARDS; NON-RESIDENT SALESMEN

24 January 1956

Only the city or town in which is located the principal office, branch office or plant of a marble yard may levy a license tax on such business or upon salesmen soliciting orders.

TAXATION; LICENSE TAXES; MOTOR VEHICLES

7 December 1954

State license taxes on motor vehicles are principally based on vehicle weight, except that common carriers of passengers and common carriers

of property are taxed on the basis of 6% of gross revenue, unless they choose to pay at the highest contract carrier rate.

The State does not share any of the revenue described above with local governmental units. Motor vehicles are subject to city and county ad valorem property taxation at the same rate as other tangible personal property. It is my understanding that the Blue Book or Red Book valuations are used in determining valuations for tax purposes.

Cities may levy a motor vehicle license tax not exceeding \$1.00 per motor vehicle per year, except that a taxicab may be subjected to a \$15.00 annual city license tax. Counties levy no license tax on motor vehicles.

Under the general law, the State Highway and Public Works Commission is required to maintain all city streets which constitute a part of the State Highway System. Of course, the gasoline tax is the source of the Commission's funds. In addition there is allocated from the State highway fund to cities and towns for street purposes an amount equal to a one-half cent gasoline tax. One-half of this fund is allocated on a population basis, and one-half on a mileage basis.

TAXATION; LICENSE TAXES; MUNICIPAL CORPORATIONS;
COLLECTION; PENALTIES

4 February 1955

A city ordinance could properly prohibit a person from engaging in business without procuring the appropriate city license.

TAXATION; LICENSE TAXES; MUNICIPAL POWER TO LEVY;
LUMBER AGENTS AND LUMBER DEALERS

13 September 1954

Under the general authority granted in Section 160-56 of the General Statutes, a city or town may levy a license tax on lumber dealers.

TAXATION; LICENSE TAXES; MUNICIPALITY; MANUFACTURING FOR
UNITED STATES GOVERNMENT

13 May 1955

A municipality may levy a non-discriminatory license tax upon a corporation carrying on within the city limits manufacturing solely for the United States Government on land owned by the United States, provided jurisdiction over such property has not been ceded by the State to the Federal Government, even though the burden of such tax will be passed on to the Government under the terms of the contract between it and the contractor.

TAXATION; LICENSE TAX; MUSICAL GOODS LICENSE TAX**21 January 1955**

A limitation in the Revenue Act as to the amount of license tax which a city may levy with respect to any particular business or occupation supersedes the general authority to levy a license tax granted to cities under the provisions of G. S. 160-56.

TAXATION; LICENSE TAXES; OUT-OF-TOWN TV DEALERS**12 June 1956**

Out of town television set dealers who deliver and install sets within a town are doing business within the town and would be subject to the taxing power of the town.

**TAXATION; LICENSE TAX; PARTNERSHIP; SALE BY
ONE PARTNER TO THE OTHER****14 February 1955**

When one partner sells his interest in the business to the other partner, the continuing partner must purchase a new license from the State if the business is of a type for which the Revenue Act provides a license is non-transferable. Whether a new city license is required will depend upon the terms of the municipal ordinance.

TAXATION; LICENSE TAX; PEDDLERS; BAKERY DELIVERY**27 September 1954**

A peddler of bread, cakes or pies is specifically exempted from the peddlers license imposed by Section 121 of the Revenue Act.

TAXATION; LICENSE TAXES; PEDDLERS OF BIBLES**11 August 1954**

A peddler of Bibles is exempt from the peddlers license tax.

TAXATION; LICENSE TAXES; PEDDLERS; ELECTRIC APPLIANCE SALESMEN**2 September 1955**

A salesman of electrical appliances who travels about the county, leaving an appliance for trial with a prospective customer, or either making an

immediate sale, is not a "peddler" within the meaning of G. S. 105-53, if he maintains or works from a fixed permanent location at which at least 90% of the firm's total sales are made, and for which location all applicable State and local taxes are paid.

TAXATION; LICENSE TAXES; PEDDLERS; GENERAL

17 May 1956

A municipality may levy and collect a privilege license tax upon peddlers of proprietary remedies and products either under the provisions of G. S. 105-53 or under the general taxing powers granted municipalities by G. S. 160-56.

TAXATION; LICENSE TAXES; PEDDLERS; MUNICIPALITIES

16 July 1954

An itinerant salesman, who is not a regular merchant in a particular county, and who exposes merchandise for sale on the streets of a town is subject to a \$100.00 license tax. Cities and counties may levy a tax not in excess of \$100.00.

TAXATION; LICENSE TAXES; PHOTOGRAPHERS

23 May 1955

Subsection (c) of G. S. 105-41 prohibits counties, cities and towns from levying a license tax on photographers.

TAXATION; LICENSE TAXES; POOL TABLES; TRANSFER OF LICENSE

4 March 1955

A State pool table license is collectible from the owner of the building wherein the same is located, although it is customary to attempt collection from the building owner only when otherwise unable to collect from the owner or operator of the pool table. A pool table license is a location license and, upon payment of the proper fee, may be cancelled with respect to one location and reissued for a new location.

TAXATION; LICENSE TAXES; REAL ESTATE DEALERS

10 March 1955

A real estate dealer is required to secure a State license under the provisions of Section 109 of the Revenue Act.

TAXATION; LICENSE TAX; REFUND WHEN PRIVILEGE NOT EXERCISED

7 November 1955

While it is not entirely clear, it is probable that a county may refund a license tax where the privilege conferred is never exercised.

**TAXATION; LICENSE TAXES; SERVICE STATIONS; SERVICE GARAGES;
MUNICIPAL LICENSE TAX**

13 July 1955

A person who operates a motor vehicle body and paint shop at a place separate and apart from a service station in the same town may be required by said town to pay a separate license tax with respect to such body and paint shop.

TAXATION; LICENSE TAXES; SEWING MACHINE COMPANIES; CHAIN STORES

18 May 1956

Although municipalities are prohibited from levying a privilege license tax upon sewing machine dealers as such, if a sewing machine dealer in a particular municipality is a part of a chain system and is not the principal unit of the chain, the municipality may levy a chain store tax upon the sewing machine dealer.

**TAXATION; LICENSE TAXES; SWIMMING POOLS; PRIVATE CLUBS;
MEMBER USE; MUNICIPAL POOL**

23 August 1955

Clubs operating swimming pools solely for the use of club members are not subject to a county license tax levied under the provisions of Section 131 of the Revenue Act. A municipal swimming pool is not subject to the license taxes levied under Schedule B of the Revenue Act.

**TAXATION; LICENSE TAXES; THEATER; SALE OF TICKETS; EMPLOYMENT
OF PROFESSIONAL NON-LOCAL TALENT**

21 December 1954

When theatrical performances are presented by a Little Theater group, and attendance is permitted only on the basis of membership in the Little Theater and not through the purchase of performance tickets, such theatrical performances are not subject to any State license tax.

TAXATION; LICENSE TAX; TRADES AND SERVICES

30 June 1955

A municipality may levy a license tax on persons engaged in service businesses such as letter writing, telephoning and mimeographing for the public.

TAXATION; LICENSE TAX; TRADING STAMP COMPANY; SOLICITING
ORDERS IN NORTH CAROLINA; SECTION 156

14 July 1955

A trading stamp company located outside of North Carolina which solicits orders of stamps in this State and fills such orders by mail from outside the State is not subject to the trading stamp license tax imposed by G. S. 105-92. Such company probably would be taxable if stamps were brought into this State in bulk and deliveries made from such bulk to various purchasing merchants.

TAXATION; LICENSE TAXES; TRADING STAMP COMPANY; USE IN OWN
BUSINESS AND OTHER BUSINESSES

18 April 1956

Under the circumstances presented, a trading stamp company giving its stamps to operators of other businesses within the municipality would be subject to a privilege license tax levied by the county or municipality. It would not be subject to such a tax merely because it did business of another type in the county or municipality.

TAXATION; LICENSE TAXES; TRADING STAMPS

4 August 1955

When the only activity of a trading stamp company in a particular county is that of soliciting orders for trading stamps which are both delivered and redeemed in another county, no license tax liability is incurred in the county where the sale of trading stamps is solicited only.

TAXATION; LICENSE TAXES; TRADING STAMPS; MERCHANT ISSUING STAMPS
REDEEMABLE BY MERCHANT; SECTION 156 OF THE REVENUE ACT

17 November 1955

A retail food merchant who gives trading stamps to his customers, which stamps are redeemable by the merchants for articles of merchandise, is not required to obtain the license provided in G. S. 105-92.

TAXATION; LICENSE TAXES; TRADING STAMPS; SECTION 156, REVENUE ACT

23 May 1955

Under Section 156 of the Revenue Act, a trading stamp company must pay an annual license tax and such tax must be paid with respect to each place of business maintained by a trading stamp company for the purpose of distributing trading stamps in this State to merchants who will in turn distribute them to customers. Each county and each city or town in which such a trading stamp office is located is subject to a similar tax not in excess of that levied by the State. Furthermore the distribution of premiums which are subject to license taxes when otherwise sold at retail would likewise be subject to the appropriate license taxes. If more than one premium store is maintained in this State, the State chain store tax imposed by Section 162 of the Revenue Act would be applicable. The trading stamp company delivering premiums in this State would be required to pay the appropriate sales or use tax with respect to premiums so distributed. Such trading stamp company would also be required to domesticate in this State and to pay appropriate income and franchise taxes.

TAXATION; LICENSE TAXES; TRADING STAMPS; SECTION 156; AUTHORITY OF COUNTY TO COLLECT TAX

1 December 1955

For purposes of G. S. 105-92, authorizing a county to levy a license tax on trading stamp businesses, a trading stamp firm can "issue, sell, or deliver" trading stamps in a county without having headquarters or a physical place of business within that county; however, it is a question of fact as to whether a particular firm does in fact "issue, sell, or deliver" trading stamps within a county, thereby authorizing the county to levy a tax under G. S. 105-92.

TAXATION; POLL TAX; APPLICABILITY TO STATE PRISONERS

31 May 1955

A male prisoner is liable for poll tax just as any other male person would be and is not exempt by reason of being in prison on the 1st day of January of the year as of which poll taxes are assessed.

TAXATION; POLL TAX; EXEMPTIONS; VOLUNTEER FIREMEN

3 March 1955

I have been unable to find any provision in the general laws of the State exempting firemen from payment of the poll tax.

TAXATION; POLL TAX; MILITARY PERSONNEL; TERMINATION OF
WAR EXEMPTION

21 December 1955

The order of the President of the United States which terminated combatant activities in Korea as of January 31, 1955, ends, for purposes of G. S. 105-341 (4), the "existing state of war," and the poll tax exemption provided under this section terminates effective with the tax listing period in 1957.

TAXATION; PRIVILEGE TAX; DOGS; MUNICIPALITIES

27 July 1954

A municipality may levy a reasonable tax for the privilege of keeping a dog running at large.

TAXATION; PRIVILEGE LICENSE TAXES; PROCESS TAX; SECTION 157 OF THE
REVENUE ACT; APPEAL TO COURT UNDER G. S. 20-279.2

13 March 1956

The process tax of \$2.00 levied under Section 157 (b) of the Revenue Act is not due upon the docketing of an appeal to the Superior Court from an order of the Commissioner of Motor Vehicles suspending an operator's license under the provisions of the Financial Responsibility Act (G. S. 20-279.2), since such appeal is not from a "lower court".

TAXATION; PROCESS TAX; APPLICABILITY TO JUSTICES OF THE PEACE;
SECTION 157 OF THE REVENUE ACT

18 June 1956

The process tax levied by G. S. 105-93 does not apply to cases in the jurisdiction of magistrates' courts except upon appeal to the superior court from the judgment of such magistrate.

TAXATION; SALES AND USE TAX; 5¢ ARTICLES; EXEMPTIONS; PACKAGED
CRACKERS AND PEANUTS

29 September 1954

Liability for the sales tax arises from the sale of 5¢ articles as well as articles at any other price. Sales of packaged crackers and sales of salted peanuts made through vending machines in a place where prepared meals are not served or in a place other than a restaurant, cafe, cafeteria, hotel dining room or drug store are exempt from the sales tax.

TAXATION; SALES TAX; BUILDING MATERIALS; CONTRACTORS;
FORT BRAGG RESERVATION

22 July 1955

A sales of building materials to a contractor is not exempt from the sales tax merely because the materials will be used in the construction of a building being built for the Federal Government. A sale of sand and gravel by a producer to a manufacturer of ready-mixed concrete for use in such manufacture is exempt from the sales tax.

TAXATION; SALES TAX; BUILDING MATERIALS; SINGLE ARTICLE;
1955 AMENDMENT

28 June 1955

A boiler purchased after July 1, 1955, is taxed at the 3% rate without any limitation on the amount of tax even though it was purchased to fulfill a contract entered into prior to July 1st.

TAXATION; SALES TAX; CHARITABLE ORGANIZATIONS; MOOSE TEMPLE

1 September 1955

A fraternal organization, such as a Lodge of the Loyal Order of Moose, is not a charitable organization within the meaning of Section 406 (q) of the Revenue Act. Therefore, a sale of tangible property to such Lodge is not exempt from the sales tax.

TAXATION; SALES AND USE TAX; CONTRACTORS WITH FEDERAL GOVERNMENT;
MATERIALS PURCHASED OR USED BY CONTRACTOR

24 August 1954

Materials purchased by a contractor for use in the fulfillment of a contract with the Federal Government are subject to the North Carolina sales and use tax even though the contract is performed on territory exclusively within the jurisdiction of the Federal Government.

TAXATION; SALES AND USE TAX; CONTRACTOR WITH U. S. ARMY CORPS OF
ENGINEERS; MATERIALS PURCHASED ARE USED BY CONTRACTOR

29 February 1956

The North Carolina sales tax applies to purchases of building materials which will be used by a contractor in relocating and remodeling a hangar on a United States Air Force Base.

TAXATION; SALES AND USE TAX; CRUSHED STONE;
APPLICATION OF SALES TAX LAW

3 August 1955

On July 1, 1955, crushed stone was by statute removed from a specific list of building materials theretofore exempt from the sales and use tax.

TAXATION; SALES AND USE TAX; EXEMPTION; BUILDING MATERIALS

17 June 1955

The subsection of the 1955 Revenue Act eliminating the sales tax exemption with respect to certain enumerated building materials contained the following provision:

"The provision of this sub-section shall not be applicable with respect to an materials purchased for the purpose of fulfilling any lump sum or unit price contract entered into or awarded before July 1, 1955, or entered into or awarded pursuant to any bid made before July 1, 1955."

The saving clause is not to be construed to relate to a contract for purchase of building materials. It relates only to the securing of materials by a contractor in order to fulfill a building contract with a third party entered into under the provisions set out in the quoted paragraph above.

TAXATION; SALES TAX; EXEMPTIONS; CHARITABLE AND EDUCATIONAL
INSTITUTIONS; WHAT CONSTITUTES A RETAILER

10 August 1955

The acquisition of materials by The Dairy Council of Burlington-Durham-Raleigh from the National Dairy Council, with respect to which some compensation is paid the National Dairy Council, would not be exempt from the State use tax.

TAXATION; SALES AND USE TAX; EXEMPTION; THE FEDERAL REPUBLIC OF
GERMANY; CONSUL AND EMPLOYEES THEREOF

15 July 1955

Inasmuch as neither the State gasoline tax nor the State sales tax are imposed directly as a matter of law upon the purchasing consumer, a German Consul and an employee of the German Consulate would not be exempt from said taxes even though a Federal treaty with Germany exempts such persons from taxation because said treaty exemption is applicable only to tax, the incidence of which falls as a matter of law upon said Consul or Consulate employee.

TAXATION; SALES AND USE TAX; EXEMPTIONS; HOUSING AUTHORITIES

12 July 1955

Sales of building materials to a city housing authority or to a contractor to be used in fulfilling a contract for said housing authority are exempt from the sales tax.

TAXATION; SALES AND USE TAX; EXEMPTIONS; MILL MACHINERY

15 November 1954

Sales of mill machinery to a contractor who uses the same in performing a contract for a manufacturing company are subject to the State sales tax.

TAXATION; SALES TAXES; EXEMPTIONS; MASONIC TEMPLE

20 July 1955

Sales of materials not otherwise exempt under the Sales Tax Act are not exempt when sold for use in the construction of a Masonic Temple.

TAXATION; SALES TAXES; EXEMPTIONS; MILL MACHINERY; LIFT TRUCK;
REQUIRED USE FOR EXEMPTION

18 April 1956

Sales of a lift truck falls within the mill machinery exemption of the Sales Tax Article only if the truck is used exclusively for moving materials along the processing line. Such a sale does not so qualify if the truck is used to remove the finished product at the end of the processing line.

TAXATION; SALES TAX; EXEMPTIONS; POSTS

20 July 1954

Sales of posts by a retail merchant who has purchased the same for resale are subject to the state retail sales tax.

TAXATION; SALES AND USE TAX; EXEMPTIONS; ROUGH AND DRESSED
LUMBER; PRODUCTS OF FOREST OR FARM

7 July 1954

When a retailer uses a certain preservative compound to treat posts or lumber brought to him by the owner, such person is liable for the use tax with respect to the preservative compound so used unless he paid the

sales tax with respect thereto at the time of the purchase of such preservative. If such person sells the preservative compound instead of using it, such sale is subject to the retail sales tax.

TAXATION; SALES TAX; EXEMPTIONS; SALES OF BUILDING MATERIAL TO
CONTRACTORS TO BE USED IN CONSTRUCTING BUILDINGS FOR LOCAL
GOVERNMENTS

6 April 1956

Sales of building materials to a contractor to be used in the construction of a County building are exempt from the sales tax.

TAXATION; SALES TAXES; EXEMPTIONS; SALE TO MUNICIPAL CORPORATIONS;
EASTERN CAROLINA REGIONAL HOUSING AUTHORITY

22 August 1955

Sales to the Eastern Carolina Regional Housing Authority are exempt from the sales tax under the provisions of G. S. 105-169 (d).

TAXATION; SALES TAXES; EXEMPTIONS; SOFT DRINKS; SALES BY
VOLUNTEER FIRE DEPARTMENT

11 March 1955

Sales of soft drinks by a volunteer fire department through means of a vending machine owned and operated by the department are subject to the sales tax.

TAXATION; SALES AND USE TAX; FEDERAL AREAS; BUCK ACT

26 July 1955

Under a Pennsylvania court decision in which certiorari was denied by the United States Supreme Court, State gasoline, income and sales and use taxes became applicable with respect to Federal areas within the State without the necessity of any further legislative enactments.

TAXATION; SALES TAXES; GOVERNMENT RESERVATIONS

8 March 1955

The provisions of the Sales Tax Article apply to retail sales made on a Government reservation in the State.

TAXATION; SALES AND USE TAX; GOODS DELIVERED FROM WITHOUT STATE

30 September 1954

When a North Carolina wholesaler orders goods from outside North Carolina and such goods are shipped by the out-of-State seller directly to the North Carolina wholesaler's customer (a retailer) in this State, there is a wholesale sale so far as the North Carolina wholesaler and the North Carolina retailer are concerned, and such transaction is subject to the wholesale sales tax.

TAXATION; SALES TAX; HOTELS; RENTAL OF ROOMS; Y.W.C.A.

12 July 1955

A Y. W. C. A. which rents rooms to transients is a hotel within the meaning of the Revenue Act and is, therefore, liable both for the hotel license tax and the tax on gross receipts from rentals of rooms to transients. The tax does not apply to rentals of rooms occupied by the same person for periods of 90 days or more.

TAXATION; SALES AND USE TAXES; HOTEL GROSS RECEIPTS TAX; DUE BILL

23 August 1955

The gross receipts tax on rental of accommodations applies to due bills when such bills are honored and used. G. S. 105-168 (d).

TAXATION; SALES TAX; INTERSTATE COMMERCE; RAILROAD LOCOMOTIVES
AND MATERIALS

9 February 1955

Materials purchased in another state by a railroad, brought into North Carolina and stored here for some interval, however brief, between the end of the journey into the State and the use in interstate commerce, are subject to the use tax. It is doubtful that the use tax can be imposed upon the use of a locomotive or car used to carry interstate freight or passengers.

TAXATION; SALES TAX; LEASE

29 October 1954

Unless a lease agreement is clearly within the scope of the decision of *WATSON v. SHAW*, 235 N. C. 203, 211, a lease of tangible personal property is within the definition of "sale" in the sales tax act and rentals received from such lease are taxable.

TAXATION; SALES TAX; MAIL ORDER BUSINESS; HOME MADE MERCHANDISE

22 November 1954

There are no State license taxes with respect to selling eyeglass and windshield cleaners, but sales thereof would be subject to the State sales tax in the same manner as the sale of other merchandise.

TAXATION; SALES TAX; MANUFACTURER'S SALES; DISTRIBUTION AT
OTHER THAN PLACE OF MANUFACTURE

23 May 1955

A manufacturing plant is liable for the sales tax at the wholesale rate whenever it maintains a warehouse or other place apart from the place of manufacture for the distribution of its products for the purpose of resale, such tax being applicable to the products so distributed through such warehouse or other place apart from the manufacturer's place of manufacture.

TAXATION; SALES TAX; MEALS; DINING CAR

10 September 1954

Where a person is served a meal on a railroad dining car, the sale takes place where the meal is served and not where the bill is paid or the food is consumed. If a meal is served in North Carolina, the tax would be payable.

TAXATION; SALES TAXES; MOTOR VEHICLES; SINGLE ARTICLE LIMITATION;
RENTAL CONTRACTS

7 September 1955

When a motor vehicle is leased for a set period of time and, during the period of the lease, the vehicle is replaced by another vehicle, the replacement constitutes a new "sale" within the meaning of the Sales Tax Article and tax is due on the replacement.

TAXATION; SALES TAXES; RECAPPED TIRE SALES

19 July 1955

When an operator of a retail tire sales business recaps the tires of a customer and replaces them on the customer's car, the policy of the Department of Revenue is to collect sales tax based on forty per cent of the

charge made by the recapper to the customer. Sales of recapped tires which were purchased by the retailer and then recapped, or which were taken in from other customers and then recapped, are fully taxable sales.

TAXATION; SALES TAXES; RENTALS; RENTALS OF VEHICLES
TAKEN AS TRADE-INS

15 September 1955

Rentals of trailers purchased for the purpose constitute "sales" within the meaning of the Sales Tax Article. Each rental of a specific trailer for a specific duration of time or for a period of time to be determined with reference to another specific act constitutes the rental of a single article. Rentals of trailers taken as trade-ins on the sales of new trailers are not subject to sales tax, if the tax was paid on the full amount of the sales price of the new trailer, subject to the single article maximum applicable to the sale of a motor vehicle.

TAXATION; SALES TAX; RENTALS BY MUNICIPALITIES; BOATS ON
CITY RESERVOIR

25 May 1956

A municipality is required to collect sales taxes on the rental by it of boats used for fishing on the reservoir.

TAXATION; SALES TAX; SINGLE ARTICLE; BUILDING MATERIALS

14 September 1955

One who purchases a single article for more than \$500 after July 1, 1955, must pay a sales tax or a use tax of 3% of the purchase price without limitation, unless such price was within one of the exemptions in the Sales Tax Act.

TAXATION; SALES OR USE TAX; SINGLE ARTICLE; CONVEYOR

29 September 1955

When the manufacturer of chain conveyors sells to a North Carolina purchaser and ships in ten packages the collection of pipes and fittings which, upon being assembled, becomes a chain conveyor, the use tax due is 3% of the purchase price. The \$15.00 limitation on a single article applicable to sales made prior to July 1, 1955, does not apply in this case, because this is not a sale of a single article but a sale of materials similar to that in *WATSON INDUSTRIES v. SHAW*, 235 N. C. 203.

TAXATION; SALES TAXES; SINGLE ARTICLES; IRRIGATION SYSTEMS

5 August 1954

Sales of a farm irrigation system would be subject to the 3% sales tax, except that any one item selling for more than \$500.00 would be subject to the single article \$15.00 limitation. The system as a whole cannot be considered a single article.

TAXATION; SALES TAX; SINGLE ARTICLE LIMITATION; PURCHASE ENTERED BEFORE JULY 1, 1955; DELIVERY AFTER JULY 1, 1955

31 January 1956

A bookkeeping machine which is "ordered" prior to July 1, 1955, but which is delivered after July 1, 1955, and title to which does not pass to the purchaser until after July 1, 1955, is subject to the 3% sales tax on the full purchase price. The \$15 single article limitation is not applicable in this case.

TAXATION; SALES TAX; SINGLE ARTICLE LIMITATION; SALE NOT COMPLETED UNTIL OR AFTER JULY 1, 1955

22 June 1955

The 1955 sales tax amendment, eliminating the maximum tax of \$15.00 per single article became effective on July 1, 1955, and thus such limitation will not be applicable with respect to any sale completed on or after July 1, 1955. The question of whether a sale has been completed by July 1 must be determined according to the substantive law of sales. Except in unusual circumstances, a sale ordinarily is not regarded as completed until delivery to the vendee occurs.

TAXATION; SALES TAXES; SPECIAL MOBILE EQUIPMENT; CRANE

15 September 1955

A crane installed on the chassis of a motor vehicle and sold as a unit constitutes special mobile equipment. The sale of such an item is taxable at the 3% rate.

TAXATION; SALES TAXES; TRUCKS; RENTALS

13 June 1955

Purchases of vehicles for the purpose of engaging in the business of renting such vehicles are purchases for resale within the meaning of the

sales tax article. The subsequent rentals are sales within the meaning of the sales tax article.

TAXATION; SALES TAX; TWO ARTICLES; FRONT-END MACHINE WITH
WHEEL BALANCER

20 October 1954

A front-end machine with a wheel balancer constitutes two separate articles within the meaning of the sales tax provision providing a maximum sales tax of \$15.00 with respect to a single article.

TAXATION; SALES TAX; USED FURNITURE; SECONDHAND ARTICLES;
APPLICABILITY OF SALES TAX

23 July 1954

Purchases of secondhand merchandise, by dealers in such merchandise, in the interpretation of the sales tax article, are purchases of new merchandise, and when resold at retail, unless otherwise exempt are subject to the three per cent (3%) retail rate of tax.

TAXATION; SALES TAX; WHOLESALE SALES; RETAILER TO A RETAILER

13 September 1954

A sale by one retail merchant to another retail merchant of goods for resale is a wholesale sale and subject to the sales tax at the wholesale rate.

TAXATION; SALES TAX; WHOLESALE TAX; BABY CHICKS

26 July 1954

A sale of baby chicks by a hatchery to a person who is to feed and care for the chicks until they grow to be broilers and then sell them as broilers is a sale "for resale" and, therefore, is subject to the sales tax at the wholesale rate.

TAXATION; SALES TAXES; WHOLESALE TAX; SALES BETWEEN DEALERS

24 February 1956

Sales at cost between automobile dealers are taxable at the wholesale sales tax rate when such sales are for resale.

TAXATION; SITUS OF PERSONAL PROPERTY

11 January 1956

Section 800 of the Machinery Act, G. S. 105-302, provides generally that personal property shall be listed for taxation at the place of residence of the owner and that, where a person has two or more residences in which he occasionally dwells, his residence is the place in which he resided the longest period during the preceding year. "Residence", as used in this statute, seems to be synonymous with abode, where a person exists, where his physical presence is during the greater part of the preceding year. The statute makes no differentiation because of the reason for the presence of a person in a particular place and it makes no difference whether he be a State employee, teacher, college student, male or female.

TAXATION; SPECIAL TAX LEVIES; POOR TAX; AID TO THE BLIND

29 May 1956

Counties are authorized to levy a tax under G. S. 111-17 to aid the indigent blind in addition to the poor fund levy authorized by G. S. 153-152 and G. S. 153-9, paragraph 6.

TOBACCO CHARGES

29 November 1955

Chapter 1029 of the 1955 Laws, which amended G. S. 106-452, fixed the maximum warehousing charges for the sale of burley tobacco at 3½% of the sale price of a pile of tobacco, plus an additional charge of 25c for such pile or basket of tobacco.

TORRENS LAW; RELEASE FROM REGISTRATION; CORPORATIONS;
EXECUTION OF CERTIFICATE

16 May 1955

A release of land from the Torrens law may be signed by any officer of the corporation when authorized to do so by vote of the board of directors, and such release may be signed by an attorney-in-fact authorized by the board of directors.

TORT CLAIMS; INDIVIDUAL LIABILITY

27 December 1955

The Tort Claims Act, which authorizes the assertion of a tort claim against the State and provides for a hearing before the Industrial Commission, does not relieve from personal liability employees of the State who may be involved in an accident while operating a State-owned vehicle.

TORT CLAIMS; STATE AGENCIES; LIABILITY OF CASWELL TRAINING SCHOOL
FOR ACTS OF ESCAPEES

6 July 1955

Under the provisions of G. S. 143-291, as rewritten by Chapter 400, Session Laws of 1955, it is thought that The Caswell Training School is not responsible for the act of an escapee in stealing an automobile from an individual, and damaging the same.

TORT CLAIMS; STATE INSTITUTIONS; CHILDREN ALLOWED TO SWIM IN
STATE SUPPORTED COLLEGE POOL

7 March 1956

If a State-supported institution of higher learning initiates a program which allows children other than children of students to swim in the institution swimming pool under the supervision of employees of the institution, injuries to such children, through the negligence of the supervisors who are employees of the institution, are compensable under the Tort Claims Act.

TRUSTS; ANTITRUST LAWS; APPLICABILITY TO LABOR UNIONS; LABOR LAWS

3 November 1955

Although Chapter 75 of the General Statutes does not specifically refer to labor unions, any labor union in fact violating the provisions of said chapter would be in the same position as any other firm, corporation or association violating the statute.

WEAPONS; PERMIT TO PURCHASE; MILITARY PERSONNEL

8 March 1956

Individuals who are on active military service in North Carolina, and who purchase for their personal use a firearm, are subject to Section 14-402, which makes it unlawful for "any person" to make such a purchase without first obtaining a license or permit from the Clerk of the Superior Court.

WEAPONS; PISTOL PERMITS; BLANK CARTRIDGE PISTOL

13 March 1956

A blank cartridge pistol manufactured for the purpose of shooting blank cartridges and so constructed that only blank cartridges may be used is not within the scope of G. S. 14-402 and 14-403 relating to the sale of weapons.

WEIGHTS AND MEASURES; PURCHASE OF WOOD BY CORD OR BY WEIGHT

27 April 1956

Whenever wood is bought or sold in this State on the basis of ricked or stacked measurement, the unit of said measurement shall be the cord and no other. However, if the wood is bought or sold as loose wood hauled in trucks or other vehicles, it may be bought or sold by weight.

WELFARE; ADOPTION; ABANDONMENT; EFFECT OF ADJUDICATION

24 May 1956

In an adoption proceeding where a parent of the child has filed an answer to the petition denying abandonment of the child, and the issue of abandonment has been answered by a jury in the Superior Court in the affirmative, the adoption court may proceed without permitting the parent to participate further in the proceedings.

WELFARE; ADOPTION; ADJUDICATION OF INCOMPETENCE OF NATURAL PARENT; CONSENT; CUSTODY

5 April 1956

The judgment of a Juvenile Court that a parent is mentally incompetent to care for his child is not such an adjudication of mental incompetence as would enable the adoption court to appoint a next friend for the child. Such adjudication should be made pursuant to G. S. 35-2, 35-2.1, or 35-3.

The award of custody of a child by a Juvenile Court to the superintendent of public welfare does not authorize the superintendent to consent to the adoption of the child.

WELFARE; ADOPTION; CHILD OF DIFFERENT RACE

15 June 1956

There is no provision of the adoption law of North Carolina which prohibits the adoption of a child by a person or persons of a different race.

WELFARE; ADOPTION; CONSENT; CHILD BORN DURING EXISTENCE OF LEGAL AND BIGAMOUS MARRIAGE

13 October 1954

A child born during the existence of a lawful marriage is presumed legitimate and as provided in G. S. 50-11.1, a child born of a bigamous marriage is legitimate. Therefore, where the mother of a child is legally married and bigamously married at the same time and has a child upon whom the light of legitimacy is cast from both directions, the safest method of procuring an adequate consent to the adoption of this child would be to comply with the requirements of the adoption law regarding consent with regard to the legal husband and the bigamous husband of the marriages.

WELFARE; ADOPTION; CONSENT; DIVORCED PARENT

11 May 1955

The recital in a divorce decree of the desertion of a wife by her husband would not be sufficient as a judicial declaration of abandonment of a child of the marriage by the husband and father so as to eliminate the natural father of the child as a necessary party under the provisions of G. S. 48-5, subsection (a), in a subsequently instituted proceeding for the adoption of the child.

WELFARE; ADOPTIONS; CONSENT; PARENT IN PRISON

30 September 1955

G. S. 48-9 (2) should be construed so that the incarceration of the mother of a minor child in the State's Prison would not have the effect of disqualifying her to give consent to the adoption of her child so as to permit the court to appoint a next friend in her place to give or withhold consent to the adoption. Imprisonment of a parent does not destroy the parent's natural right to his or her minor child.

WELFARE; ADOPTION; CONSENT; SUFFICIENCY TO MAKE CONSENTING
AGENCY A PARTY

3 December 1954

A licensed child placing agency which has accepted the surrender of a child and consented to its adoption, as provided in G. S. 48-9 (1), is not a necessary petitioner and need not be named a petitioner in the adoption proceeding.

WELFARE; ADOPTION; CONSENT; SUFFICIENCY TO MAKE ONE A PARTY

28 September 1954

A written consent to adoption by the mother of a child born out of wedlock, when the child has not been legitimated prior to the time of the signing of the consent, is sufficient to make the mother a party of record to the proceeding and the provisions of G. S. 48-7 do not necessitate either the naming of the mother in, or her signature to, the petition for adoption. Reference G. S. 48-6, 48-7, 48-9, and 48-11.

WELFARE; ADOPTION; CUSTODY

10 February 1955

The mother of a child born in wedlock who has custody of the child may consent to the adoption of the child, but the father would still be a necessary party to the proceeding.

WELFARE; ADOPTION; CUSTODY OF CHILD SURRENDERED TO
SUPERINTENDENT OF PUBLIC WELFARE

29 September 1954

A child released and surrendered by natural parents to a county superintendent of public welfare to whom a general consent for adoption is also given is thereby placed in the legal custody of said superintendent, irrespective of whether a petition for adoption is actually filed.

WELFARE; ADOPTION; EFFECT ON ADOPTION OF BIGAMOUS
MARRIAGE BETWEEN ADOPTIVE PARENTS

27 March 1956

An adoption is not rendered invalid when it appears later that the adoptive parents are bigamously married and such marriage is annulled.

WELFARE; ADOPTION; FINDING OF ABANDONMENT;
CONSENT OF PERSON OTHER THAN A PARENT

22 March 1956

An order by a Juvenile Court of another state, making a child a ward of the superintendent of a county department of public welfare of such state, does not give such superintendent the authority to consent to an adoption of the child under the North Carolina Adoption Law.

WELFARE; ADOPTION; FINDING OF ABANDONMENT; SERVICE OF PROCESS

15 December 1954

It is doubtful that G. S. 7-103 defining jurisdiction of domestic relations courts confers upon them jurisdiction to determine abandonment of a child for purposes of adoption in an independent proceeding instituted for such purpose.

Where a non-resident parent is a necessary party to an adoption proceeding and his address is known, service of process outside the state should be had as provided in G. S. 1-104 rather than under the provisions of G. S. 1-98 et seq.

WELFARE; ADOPTION; FOREIGN-BORN CHILD

13 March 1956

No provision of the adoption laws of this State prohibit the adoption of a foreign-born child by its stepfather, a resident of North Carolina.

WELFARE; ADOPTION; FOREIGN COURT; PROCEDURE TO BE FOLLOWED
IN THIS STATE

12 June 1956

When an adoption has been completed through the final order in the proper court of a foreign country by a citizen and resident of this State, he may file an adoption proceeding in a court of this State under Chapter 48 of the General Statutes. A copy of the final order of adoption in the foreign court should be filed in place of the consent required by Chapter 48.

WELFARE; ADOPTION; FOREIGN COURT; SHORTENING OF PROBATIONARY PERIOD

1 April 1955

When an adoption has been completed through the final order in the proper court of a foreign country by a citizen and resident of this State, he may file an adoption proceeding in a court of this State under Chapter 48 of the General Statutes. A copy of the final order of adoption in the foreign court should be filed in place of the consent required by Chapter 48; the court may then shorten the probationary period between the granting of the interlocutory decree of adoption and the issuance of the final order, by the length of time the child has resided in the home of the petitioners. (In shortening the probationary period the court could accept the copy of the foreign final order in lieu of the certification that the child was placed in the home of the petitioners by a licensed child placing agency, as required by G. S. 48-21 (d).)

WELFARE; ADOPTION; GUARDIAN OF THE ESTATE OF ADOPTED CHILD

18 April 1956

Where a child is adopted and its name changed, the guardian of the estate of such child appointed prior to the change of name should file a final account and the guardianship should be terminated. The same person may then be appointed guardian of the estate of the child, under its new name.

WELFARE; ADOPTION; INTERLOCUTORY DECREE; NUNC PRO TUNC ORDER;
VALIDITY OF CONSENT WHEN PROCEEDING IS DISMISSED

20 October 1954

Where consent to an adoption is executed by natural parents directly to adoptive parents and the initial proceeding is dismissed because of a procedural defect, the original consent would be valid in a subsequently instituted adoption proceeding by the same adoptive parents.

Where an interlocutory decree had never been actually entered in an adoption proceeding before the expiration of six months from the filing of the petition for adoption, a nunc pro tunc order would not be proper, as a nunc pro tunc order is entered in those cases where judgment has actually been rendered, but in consequence of accident or mistake or through the neglect of the Clerk, has not been entered on the record. See CREED v. MARSHALL, 160 N. C. 398.

WELFARE; ADOPTION; INTERLOCUTORY DECREE;
READoption BY NATURAL PARENTS

31 March 1955

Where a minor child is adopted, and the natural parent later petitions for a readoption of the child with the consent of the adoptive parents, the interlocutory decree of adoption and probationary period cannot be waived under the provisions of G. S. 48-21 (c) since the natural parent is not one of the specified relationships set out in said statute [Reference G. S. 48-21 (c)].

WELFARE; ADOPTION; INHERITANCE FROM NATURAL PARENT BY
ADOPTED CHILD

16 August 1955

G. S. 28-149, paragraph 10, was rewritten by the 1955 General Assembly and now reads as follows:

"10. An adopted child shall be entitled by succession, inheritance or distribution to personal property, including, without limiting the generality of the foregoing, any recovery of damages for the wrongful death of such adoptive parent, by, through and from its adoptive parents the same as if it were the natural legitimate child of the adoptive parents. An adopted child shall not be entitled by succession, inheritance or distribution to any personal property, including, without limiting the generality of the foregoing, any recovery of damages for the wrongful death of such natural parent, by, through and from its natural parents. The natural parents of an adopted child shall not be entitled by

succession or inheritance to any real property by, through or from such adopted child."

"In the absence of a statute to the contrary, although the child inherits from the adoptive parent, he still inherits from or through his blood relatives, or his natural parents."

An adoption statute which provides that the natural parents "shall be divested of all legal rights and obligations with respect to such child should not be construed so as to deprive the child of its right to inherit from or through its natural parents." 2 C. J. S. 454, "Adoption of Children."

WELFARE; ADOPTION; JUVENILE COURT; ADJUDICATION OF
ABANDONMENT IN LIEU OF CONSENT

5 June 1956

An adjudication by a Juvenile Court that a parent has abandoned his child is not effective to eliminate the necessity for the consent of the parent in an adoption proceeding.

WELFARE; ADOPTION; LEGAL FATHER A NECESSARY PARTY;
SERVICE ON FATHER OUT OF STATE; ABANDONMENT

30 March 1956

Where a married woman gives birth to a child, her husband is presumptively the father of such child. He is the necessary party in a proceeding for the adoption of the child and must give consent unless the presumption is rebutted by competent evidence.

WELFARE; ADOPTION; NAME; CORRECTION OF RECORD BY MOTION
IN THE CAUSE

9 July 1954

If the final order in an adoption proceeding fails to give the correct name of the adopted child, and such failure is through mistake or inadvertence, the record can be amended to speak the truth through an order of the clerk of the superior court, entered pursuant to a motion in the cause.

WELFARE; ADOPTION; NAME OF CHILD

29 December 1955

It is not mandatory under North Carolina statutes governing adoption of minors, that the name of the child be changed to that of the adopting parents.

WELFARE; ADOPTION; NATURAL PARENTS; PARTIES OF RECORD

6 June 1956

The filing of consent to an adoption proceeding is sufficient to make the consenting person or agency a party of record to the proceeding, and no service of process is required to be made upon such person or agency.

WELFARE; ADOPTION; NECESSARY PARTY; APPOINTMENT OF NEXT FRIEND

9 January 1956

A grandfather of a child, both of whose parents are dead, is not a necessary party to a proceeding for the adoption of the child, when the child is not residing with the grandfather, and the grandfather is not standing in loco parentis to the child.

There is some question as to the validity, in an adoption proceeding, of a finding by a Domestic Relations Court that the child has been abandoned. The Adoption Law provides (G. S. 48-9) for such a finding of fact by the court entertaining the adoption proceeding.

WELFARE; ADOPTION; NECESSARY PARTIES; CHILD IS BORN OF
BIGAMOUS MARRIAGE

2 August 1954

When used in reference to a child, legitimate means lawfully begotten, born in wedlock, having or involving full filial rights and obligations by birth. CARTER v. CARTER, 232 N. C. 614. The father of a child born of a bigamous marriage, said child being legitimated by G. S. 50-11.1, is a necessary party to a proceeding for the adoption of the child.

WELFARE; ADOPTION; NULLIFICATION OF COMPLETED AND
FINAL ADOPTION PROCEEDING

22 March 1956

Where a man purports to marry a woman with a minor child and it later appears that the marriage was bigamous because the woman was already married; action of the Superior Court in declaring the marriage void does not affect the validity of the adoption proceeding.

WELFARE; ADOPTION; PART-ASIATIC CHILD BY PERSONS
OF CAUCASIAN ANCESTRY

13 March 1956

There is no statute or decision in this State which prohibits the adoption of a child of part-Asiatic ancestry by persons of Caucasian ancestry.

WELFARE; ADOPTION; PERSON OVER TWENTY-ONE YEARS OF AGE

28 June 1956

The laws of this State do not provide for adoption of a person over twenty-one years of age.

WELFARE; ADOPTION; PREPARATION OF LEGAL DOCUMENTS;
UNAUTHORIZED PRACTICE OF LAW

14 June 1956

Drafting a document to be filed in connection with a legal proceeding involves the practice of law, and is unlawful for one not a member of the North Carolina State Bar.

WELFARE; ADOPTION; PROCESS; NOTICE; CONTENTS

14 October 1954

In an adoption proceeding where it is necessary to serve a parent by publication and also to determine the issue of abandonment, the better practice would seem to be in specifying the nature of the relief sought in the notice of publication, to spell out the abandonment as well as stating that the proceeding is one "for adoption of the named child."

WELFARE; ADOPTION; PROTECTION OF CHILDREN WHEN
PETITION IS DISMISSED

28 September 1954

Where children are placed for adoption directly by the natural parents and the court of adoption dismisses the petition, G. S. 48-20 places the duty of taking appropriate action for the protection of the children on the superintendent of public welfare in the county in which the petition was filed. Upon motion in the court of adoption by the superintendent of public welfare, the court may direct a proper order to the adoptive parents to produce the child before the court.

WELFARE; ADOPTION; SIBLINGS

17 April 1956

The laws of this State do not permit the adoption of a child by its brother or sister.

WELFARE; APPOINTMENT OF GUARDIAN FOR RECIPIENT

27 March 1956

The Clerk of the Superior Court may appoint a guardian for an adult incompetent only after incompetency has been established by a finding of a jury (G. S. 35-2, 35-2.1), or by the certificate of a superintendent of a mental hospital or of the Regional Medical Officer of the United States Veterans' Bureau of North Carolina.

Failure of the Clerk of Court to require bond of a guardian pursuant to G. S. 33-12 does not invalidate the appointment of the guardian.

WELFARE; CUSTODY OF ILLEGITIMATE CHILD; NATURAL FATHER; STEPFATHER

8 June 1956

This office is unaware of any authority giving superior right to custody of a non-legitimated illegitimate child either to the stepfather or natural father of such child.

WELFARE; ENDORSEMENT BY CLERK OF PUBLIC ASSISTANCE CHECK
PAYABLE TO DECEASED RECIPIENT OF AID TO THE PERMANENTLY
AND TOTALLY DISABLED

22 March 1956

Pursuant to G. S. 28-68 and 28-68.2, a Clerk of the Superior Court may receive a check made payable to a recipient of aid to the permanently and totally disabled, which check was not endorsed by such recipient prior to his death, and may disburse the funds thus collected.

WELFARE; ESTABLISHMENT OF RESIDENCE BY MENTAL INCOMPETENT;
ELIGIBILITY FOR ADMISSION TO STATE INSTITUTION FOR THE
MENTALLY DISORDERED

12 March 1956

An adult person who is non compos mentis may not by moving to North Carolina from another state acquire the status of resident of this State for the purpose of admission to Caswell Training School.

WELFARE; JAILS; EFFECT OF UNFAVORABLE REPORT ON
CONDITION OF JAIL ON CIVIL OR CRIMINAL
LIABILITY OF COUNTY OFFICIALS

28 March 1956

An unfavorable report on the condition of a county jail by the Inspector of Correctional Institutions of the State Board of Public Welfare does not,

of itself, impose any civil or criminal liability upon county officials, nor does it, of itself, require such officials to place prisoners in available space in the jail of another county.

WELFARE; JUVENILE COURTS; JURISDICTION; ABANDONMENT OF CHILDREN

13 September 1955

The Juvenile Court has exclusive original jurisdiction of any case of a child less than sixteen years of age residing in or being at the time within its respective district where such child is an abandoned child irrespective of the residence of the mother of the child. Service of summons may be had upon the mother as provided in G. S. 110-28 and such service may be by publication in the discretion of the court.

WELFARE; OLD AGE ASSISTANCE LIEN; ACTION TO ENFORCE LIEN
WHERE PREMISES OCCUPIED BY SURVIVING SPOUSE

8 July 1954

Under the provisions of G. S. 108-30.1 an action to enforce the lien created thereby must be brought within one year from the date of death of the old age assistance recipient, and not within one year from the date of death of a surviving spouse who occupies the premises as a homesite or within one year from the date that such surviving spouse may cease to occupy the premises as a homesite. In other words, the statutory provision limiting the time for bringing an action to enforce the lien to one year after the death of a recipient is not suspended by occupation of the premises as a homesite by a surviving spouse. However, the statute is clear that no execution may issue against the property so long as it is occupied by a surviving spouse.

WELFARE; OLD AGE ASSISTANCE; ACTION TO FORECLOSE
LIEN DURING LIFETIME OF RECIPIENT

8 July 1954

Foreclosure of old age assistance lien during the lifetime of a recipient would have to be by action of foreclosure in the Superior Court *i.e.* a judicial foreclosure. The statute seems to contemplate the county attorney as the party to take necessary action to enforce the lien.

WELFARE; G. S. 108-30.1, OLD AGE ASSISTANCE LIEN LAW;
ACTION THEREUNDER

16 February 1955

The filing of the statement in the regular lien docket, docketing, and cross indexing of the lien does not constitute the bringing of an action as contemplated by G. S. 108-30.1.

WELFARE; OLD AGE ASSISTANCE LIEN; AGREEMENT OF LIEN

14 January 1955

The old age assistance lien established by G. S. 108-30.1 is created by operation of law and constitutes a lien against the real property, and a claim against the estate of a recipient for all old age assistance grants paid from and after October 1, 1951, to said recipient. The failure of the recipient to sign an agreement of lien will not affect its validity.

WELFARE; OLD AGE ASSISTANCE LIEN; ATTACHMENT AND NOTICE OF LIEN

27 June 1955

The lien for old age assistance created by G. S. 108-30.1, attaches to all real property owned by the recipient from and after October 1, 1951; notice to purchasers or encumbrances for value is effected by the filing of the statement of lien as provided in the statute, and the lien may not be defeated by a conveyance of the property by the recipient during his lifetime.

WELFARE; OLD AGE ASSISTANCE LIEN; CANCELLATION OF LIEN

9 March 1956

The board of county commissioners and the county board of public welfare, acting jointly and after investigation, may release one of two tracts of land owned by a recipient of old age assistance from the effects of the old age assistance lien, where the recipient agrees to sell the first tract of land and apply the proceeds to the improvement of the remaining tract.

WELFARE; OLD AGE ASSISTANCE LIEN LAW; CLAIM AGAINST
ESTATE OF RECIPIENT

10 February 1955

Where an old age assistance recipient dies leaving real property in a county other than that in which the old age assistance lien provided in G. S. 108-30.1 has been filed, a claim should be filed against the estate of the recipient with the administrator as provided in G. S. 108-30.2. The administrator should then treat this claim as any other debt of the decedent.

WELFARE; OLD AGE ASSISTANCE LIEN; CONSTRUCTION OF DEED

4 August 1955

"When the granting clause in a deed to real property conveys an unqualified fee and the *habendum* contains no limitation on the fee thus

conveyed and a fee simple title is warranted in the covenants of title, any additional clause or provision repugnant thereto and not by reference made a part thereof, inserted in the instrument as a part of, or following the description of the property conveyed, or elsewhere other than in the granting or *habendum* clause, which tends to delimit the estate thus conveyed, will be deemed mere surplusage without force or effect." *JEFFRIES v. PARKER*, 236 N. C. 756.

WELFARE; OLD AGE ASSISTANCE LIEN LAW; COSTS OF COLLECTION OF CLAIM

23 May 1955

"Necessary costs" as defined in G. S. 108-30.3, as amended by House Bill 152, ratified March 16, 1955, is broad enough to include the cost of attorneys' fees for legal services rendered in collecting the claim for old age assistance. This amendment does not authorize the county attorney to deduct his fee from the amount collected for services rendered in this connection, but would seem to contemplate that the county attorney render a county a bill for any additional services rendered in collecting the claim.

WELFARE; OLD AGE ASSISTANCE LIEN; CREATION OF REMAINDER
INTEREST IN PERSONAL PROPERTY BY DEED

27 June 1956

Prior to 1953 a remainder over after a life estate in personal property could not be created by deed.

WELFARE; OLD AGE ASSISTANCE LIEN; DOWER INTEREST OF RECIPIENT

16 May 1956

A dower interest in real property is subject to the old age assistance lien as provided by G. S. 108-30.1.

WELFARE; OLD AGE ASSISTANCE LIEN; EFFECT AGAINST PROPERTY OF
SURVIVOR OF ESTATE BY ENTIRETIES

17 August 1954

Where a husband and wife who are old age assistant recipients own property by the entireties, lien having been filed pursuant to G. S. 108-30.1, and either of them die, thereby vesting title in the survivor, the lien is effective against the property to the extent of the total amount of old age assistance paid to such survivor from and after October 1, 1951.

WELFARE; G. S. 108-30.1; OLD AGE ASSISTANCE LIEN; EFFECT ON
LIFE ESTATE OF RECIPIENT

20 January 1955

The lien for old age assistance created by G. S. 108-30.1 could not attach nor have any effect on the life estate of a recipient who has died, since a life estate terminates *eo instante* upon the death of a life tenant. The lien would attach to a life tenant's interest during his or her lifetime as would any other general lien against real property.

WELFARE; OLD AGE ASSISTANCE; ELIGIBILITY

9 September 1954

Receipt of a disability pension from the United States Government will not of itself preclude an applicant from receiving old age assistance benefits if otherwise eligible. Reference G. S. 108-21.

WELFARE; OLD AGE ASSISTANCE LIENS; FEES FOR COLLECTION;
COUNTY ATTORNEY

5 April 1956

Reasonable attorneys' fees as determined by the Board of County Commissioners are properly chargeable as a part of the cost of collection of any claim under the old age assistance lien law.

The county commissioners may retain an attorney other than the county attorney for the purpose of collection of claims under the old age assistance lien law.

WELFARE; OLD AGE ASSISTANCE LIEN LAW; INCOMPETENT APPLICANT

24 September 1954

Where an applicant for old age assistance is considered physically and mentally unable to manage his own affairs and an inquisition before the Clerk for the adjudication of such incompetency is not desired for the purpose of appointment of a guardian to sign the agreement of lien as provided in G. S. 108-30.1, a reasonable alternative would seem to be the signing of an agreement by all of the heirs of the applicant respecting any interest to which they might become entitled as heirs of the applicant in any real property owned by him at his death.

WELFARE; OLD AGE ASSISTANCE LIEN; INDEXING; NOTICE WHERE LAST
NAME OMITTED FROM RECORDED LIEN

16 September 1954

Where the Clerk of Superior Court inadvertently omits on the recorded lien the last name of the person against whom the lien is filed, but the lien is correctly and properly indexed showing the book and page number where it is filed, such indexing and filing will constitute due notice of the lien.

WELFARE; OLD AGE ASSISTANCE; LIABILITY OF PROPERTY OF HUSBAND FOR
ASSISTANCE PAID TO WIFE

28 December 1955

The personal property of a husband is not subject to claim, under G. S. 108-30.1 through G. S. 108-30.3, for old age assistance furnished to his wife.

WELFARE; OLD AGE ASSISTANCE LIEN; LIFE ESTATE WITH
POWER OF APPOINTMENT

6 April 1956

An old age assistance lien attaches to the life estate of a recipient. The power of appointment unexercised during the life of the life tenant, who is an old age assistance recipient, does not enlarge the estate of such life tenant.

WELFARE; OLD AGE ASSISTANCE LIEN; PRIORITY OF CLAIM AGAINST
PROCEEDS OF SALE OF REALTY; FUNERAL EXPENSES

18 August 1954

The claim for funeral expenses against the estate of a decedent is in the second class of debts under G. S. 28-105. Therefore, a claim against the real property of a deceased recipient of old age assistance, lien having been filed pursuant to G. S. 108-30.1, has priority over a claim for funeral expenses in proceeds derived from a sale of the real property of the deceased recipient.

WELFARE; OLD AGE ASSISTANCE LIEN; RELEASE BY COUNTY COMMISSIONERS

16 August 1955

Where a recipient of old age assistance against whom a lien has been filed pursuant to G. S. 108-30.1 wishes to trade his homeplace consisting

of mountain land for another more suitable place to be used as a home, the two places being of equal value, and where it is desired to obtain a release of the original homeplace from the effect of the old age assistance lien, the following is a suggested procedure: The Board of County Commissioners might adopt a resolution reciting all the facts and determining that the tract of mountain land should be released from the effect of the lien in consideration of the substitution therefor of the more suitable tract of land to be used as a homeplace. The Commissioners could then execute a deed of release of the tract of mountain land and should recite in the deed the consideration of substitution of the other tract of land of equal value.

WELFARE; OLD AGE ASSISTANCE LIEN; SALE OF DOWER INTEREST OF
RECIPIENT; RELEASE OF TRACT FROM EFFECT OF LIEN

14 January 1955

When real property is sold in which a widow who is also an old age assistance recipient has a dower interest, the value of her dower interest may be computed by using mortality tables in G. S. 8-46 and 8-47. The value of this interest would be properly considered in determining her eligibility to receive old age assistance benefits. If the value of the recipient's dower interest is paid to the county, the particular tract of land sold should be released from the effect of the lien by duly adopted resolution of the county commissioners, reciting the facts justifying such release, where such amount is less than the amount which has been received by the recipient from the county.

WELFARE; OLD AGE ASSISTANCE LIEN; SALE OF PROPERTY COVERED BY LIEN

14 January 1955

There is no provision in the old age assistance lien law allowing the release of a portion of land covered by the lien so that it might be sold. The amount of assistance received may be paid, the lien cancelled, and the recipient may re-apply for old age assistance at a later date.

WELFARE; OLD AGE ASSISTANCE LIEN; SALE OF REALTY BY ADMINISTRATOR;
SURVEY WHEN DESCRIPTION INDEFINITE

3 August 1955

When a recipient of old age assistance dies, leaving realty but no personal property, and the county desires to bring action to foreclose the lien created by G. S. 108-30.1, an administrator should be appointed who may bring a proceeding pursuant to G. S. 28-81 to sell the land to create assets to pay the county's claim for old age assistance. Where the descrip-

tion of the land is indefinite, an order of survey to obtain a proper description thereof may be made by the Clerk pursuant to G. S. 1-408.1 after a special proceeding has been instituted to sell the land.

WELFARE; OLD AGE ASSISTANCE LIEN; SALE OF TIMBER FROM
REAL PROPERTY SUBJECT TO LIEN

15 May 1956

The board of county commissioners and the county board of public welfare, acting jointly, may authorize the sale of timber standing upon a tract of real property, subject to an old age assistance lien, where the proceeds of the sale are to be used for necessary repairs and improvements to the house of the recipient.

WELFARE; OLD AGE ASSISTANCE LIEN; SIGNING OF AGREEMENT OF LIEN
BY HUSBAND AND WIFE APPLICANTS

10 December 1954

The claim for old age assistance created by G. S. 108-30.1 is a claim against a recipient individually and is not the joint obligation of a husband and wife where one of them is a recipient. Therefore, the signing of the agreement constituting a lien on the real property of a recipient is required only of the individual applicant, even though the applicant may have a living husband or wife.

WELFARE; OLD AGE ASSISTANCE LIEN; TRANSFER OF PROPERTY
COVERED BY LIEN

15 December 1954

The transfer of property covered by an old age assistance lien created by G. S. 108-30.1 properly filed and indexed in the office of the Clerk of Superior Court will not prevent the lien attaching to the property for amounts paid to the grantor-recipient subsequent to the transfer.

WELFARE; OLD AGE ASSISTANCE LIENS; WHEN LIEN ATTACHES

17 May 1956

An old age assistance lien attaches to real property where the lien was filed in October, 1951, though the property was conveyed by the old age recipient in 1949, where the deed of conveyance was not recorded until 1956.

WELFARE; PARENT-CHILD; NECESSARY MEDICAL ASSISTANCE TO CHILDREN

3 February 1955

Willful omission to provide medical necessities for children because of religious belief is not a common law crime in itself; however, in case of death the parents of the children can be tried for manslaughter in most jurisdictions.

WELFARE; SUPPORT OF ILLEGITIMATE CHILDREN; BASTARDY ACT

10 September 1954

A warrant may be issued to determine the paternity of a bastard child prior to the birth of such child. See G. S. 49-5.

WELFARE; UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT;
APPOINTMENT OF NEXT FRIEND WHERE NORTH CAROLINA IS
INITIATING STATE

6 April 1955

The following are applicable to a wife instituting an action for support under Chapter 52A of the General Statutes, Uniform Reciprocal Enforcement of Support Act:

- A. When a wife, not divorced, is seeking support only for herself and has reached her majority, she may bring the action in her own name without the appointment of a next friend.
- B. When a wife, not divorced, is seeking support for herself and her minor child or children, in my opinion, she could bring the suit individually and upon application to and appointment by the court, in the name and behalf of her minor children as next friend. I know of nothing to prevent her suing in both capacities.
- C. When a wife, not divorced, is seeking support for her minor children only, she could bring suit in the name of her children and in their behalf as next friend.
- D. Where a former wife who has obtained an absolute divorce is seeking support for the minor children born of the marriage, action may be brought in the name of the child or children and on their behalf by a duly appointed next friend. As noted in your letter, this is the situation in the case of MAHAN v. READ, 240 N. C. 641. In such case the former wife could, in my opinion, bring suit as next friend.

(Reference Mahan v. Read, 240 N. C. 641)

WELFARE; UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT;
COURT HAVING JURISDICTION

13 June 1955

G. S. 52A-3, Subsection (4), and G. S. 52A-9, as amended by Chapter 699, Session Laws of 1955, effective July 1, 1955, confers civil jurisdiction on inferior courts in the case of proceedings received from another state under the Uniform Reciprocal Enforcement of Support Act against a defendant residing within the jurisdictional bounds of such court and providing said inferior court is a court of record which has jurisdiction to determine liability of persons for the support of dependents in a criminal proceeding.

WELFARE; UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT;
DISPOSITION OF CAUSE WHERE DEFENDANT IS NOT TO BE FOUND

5 October 1954

When a cause commenced under the Uniform Reciprocal Enforcement of Support Act is received from a responding state and docketed in a Superior Court of this state and summons is issued and expires due to the inability of an officer authorized to serve process to obtain service on the defendant and is returned by the officer, "After due and diligent search, not to be found" or a similar notation, the solicitor of the judicial district or his assistant appointed as provided in G. S. 52A-12 as representative of the responding state, may take a voluntary non-suit in the action.

WELFARE; UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT;
JURISDICTION OF COUNTY RECORDER'S COURT

6 March 1956

A county recorder's court established under G. S. 7-218 has jurisdiction to hear and determine cases originating in another state for the enforcement of support of dependents. (Uniform Reciprocal Enforcement of Support Act, Chapter 52A of the General Statutes.)

WELFARE; UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT;
RESPONSIBILITY OF SOLICITOR

21 December 1954

There are no duties placed upon the solicitor of the judicial district or his assistant to initiate a petition in this state for a petitioner seeking support under Chapter 52A, Uniform Reciprocal Enforcement of Support

Act. G. S. 52A-12, however, makes it the solicitor's or his assistant's duty to appear on behalf of the responding state in all proceedings under the Reciprocal Support Act.

WILLS AND ADMINISTRATION; ALLOWANCE TO CHILD UNDER G. S. 30-17

12 September 1955

Under the language of G. S. 30-17, it is thought that if a woman dies intestate leaving a husband and a child under the age of fifteen years, the child is entitled to an allowance of \$250.00 for its support in addition to its distributive share of the personal estate of the mother.

WILLS AND ADMINISTRATION; COMMISSIONS ALLOWABLE
TO ADMINISTRATOR C.T.A.

28 June 1956

An administrator c.t.a. is entitled to commissions upon the receipt of bank balances on hand at the death of the executor in an amount not to exceed 5 per cent in the discretion of the Clerk of the Superior Court.

WILLS, CONSTRUCTION; LIFE ESTATE WITH POWER OF DISPOSAL

17 August 1955

Where an estate devised is specifically limited to the life of the devisee, the power of disposition does not enlarge the estate devised or convert it into a fee. One is property, the other is power. Neither limits or enlarges the other. *HARDEE v. RIVERS*, 228 N. C. 67 (1947).

WILLS; ADMINISTRATION OF ESTATES; EXECUTOR'S COMMISSIONS;
ALLOWANCE UPON REMOVAL OF EXECUTOR

27 December 1955

An executor who is removed by court order for default and misconduct in the management of an estate is not entitled to receive payment from the estate for attorney's fees for legal counsel representing the executor on the removal charges, and neither is an executor who has been removed for default and misconduct entitled to any commission for services while executor of the estate.

WILLS; EXECUTORS AND ADMINISTRATORS; COMMISSIONS ON DISTRIBUTIONS
MADE TO BENEFICIARIES

2 August 1954

The executor of an estate is not entitled to commissions within the purview of G. S. 28-170 where the testator devises all of his property

to his children and then directs his executor to sell the realty and divide the proceeds. Such proceeds would not be designated as a legacy. The real property would descend to the heirs subject to being divested and sold by the executor.

WILLS; EXECUTORS AND ADMINISTRATORS; DISTRIBUTION OF PROCEEDS OF
GROUP INSURANCE PAYABLE TO ESTATE

8 February 1956

Construing together G. S. 58-213 and G. S. 28-58, it is thought that no part of the proceeds of a policy of group life insurance not made payable to a named beneficiary may be used to defray the costs of administration of the estate of the insured when the executor has in his hands a surplus from the sale of real estate to make assets with which to pay the debts of the estate. This conclusion is reached by analogy from the decisions of our Supreme Court in the cases of *BAKER v. RAILROAD*, 91 N. C. 308, and *BROADNAX v. BROADNAX*, 160 N. C. 432, construing G. S. 28-173.

WILLS; PROBATE AND REGISTRATION; PROOF OF EXECUTION OF INSTRUMENT

6 October 1954

G. S. 47-13 provides that if an instrument required or permitted by law to be registered has no subscribing witness, the execution of the same may be proven by proof of the handwriting of the maker. *BLACK v. JUSTICE*, 86 N. C. 504, and *LEROY v. JACOBSON*, 136 N. C. 443.

WILLS; PROBATE AND REGISTRATION; TRANSFER AGREEMENT

29 December 1954

It is thought that an instrument called a transfer agreement, by which the purchaser assigns his interest in personal property, subject to an outstanding recorded conditional sales contract; and which gives to the purchaser the consent of the mortgagee to transfer the property in conformity with a provision in the conditional sales contract to the effect that the purchaser "shall not sell or dispose of the chattel without the written consent of the dealer or assignee" is such an instrument as is entitled to registration under the provisions of G. S. 47-1, as rewritten by Chapter 772, Session Laws of 1951.

WILLS; PROBATE IN COMMON FORM; COLLATERAL ATTACK

20 February 1956

When a will has been probated in common form, it is given conclusive legal effect as the last will and testament of the decedent, subject only

to be vacated on appeal or declared void by a court of competent jurisdiction in a proceeding instituted for that purpose. Until so set aside, it is presumed to be the will of the testator. *IN RE WILL OF PUETT*, 229 N. C. 8, and *HOLT v. HOLT*, 232 N. C. 497.

WILLS; PROBATE JURISDICTION

31 May 1955

Under the provisions of G. S. 28-1(1) the Clerk of the Superior Court has probate jurisdiction in a case in which the decedent at or immediately previous to his death was domiciled in the county of such Clerk in whatever place such death may have happened.

WILLS; REGISTRATION OF INSTRUMENTS; PLACE FOR ORDER OF PROBATE; POSITION ON INSTRUMENT

25 May 1955

The position of the Clerk's order of probate on a document ordinarily follows the certificates of probate, but it would be valid if it appeared at any other place on the document, including being above the certificates of acknowledgment.

WORKMEN'S COMPENSATION ACT; RELIGIOUS ORGANIZATIONS

22 June 1955

If a religious organization employs five or more persons, it will be subject to the provisions of the North Carolina Workmen's Compensation Act.

WORTHLESS CHECKS; AIDING AND ABETTING; MERCHANTS KNOWINGLY TAKING

1 March 1956

Section 14-107 of the General Statutes (the worthless check law) makes it unlawful for any person to deliver to another any check, such person "being informed, knowing or having reasonable grounds for believing at the time of the soliciting or the aiding and abetting that the maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit with, such bank or depository with which to pay the same upon presentation."

WITNESSES HELD INCOMMUNICADO; OFFSETTING HOSPITAL COSTS

28 April 1955

Under G. S. 66-52, a county may offset against witness fees, for witnesses held in prison hospitals, expenses incurred on account of such witness. The time spent by witness in hospital would be exclusive from payment of per diem witness fee.

NORTH CAROLINA
STATE DEPARTMENT OF INVESTIGATION
DEPARTMENT OF JUSTICE
RALEIGH

JAMES W. POWELL
Director

JAMES F. BRADSHAW, JR.
Assistant Director

July 17, 1956

Honorable William B. Rodman, Jr.
Attorney General
State of North Carolina
Raleigh, North Carolina

Re: Biennial Report

Dear Mr. Rodman:

There is submitted herewith the Biennial Report for the State Bureau of Investigation covering the Fiscal Years 1954-1955 and 1955-1956.

The only major personnel change during the past biennium was the employment of a chemist, authorized by the 1955 General Assembly. As of September 1, 1955, Mr. William S. Best, a native of Gastonia, N. C., has been employed in this position. Mr. Best is a graduate in chemistry at Lenoir-Rhyne, accomplished two years of post-graduate work at the University of North Carolina, and received two years experience in the crime laboratory of the United States Army at Camp Gordon, Georgia. Your attention is respectfully invited to the section "Chemical Lab Examinations" under the statistics of the Technical Division where it will be noted that examinations of that nature increased from 105 in 1954-55 to 3,099 in 1955-56. I feel this clearly substantiates the need for the facilities to provide this service.

The present staff of the Bureau totals thirty-four, including two Supervising Agents, nineteen Special Agents, five Specialists, a Chief Clerk, and five Stenographers.

The Bureau continues to receive very fine cooperation from the Sheriffs' Departments, Police Departments, Solicitors, Judges, Executive Departments of the State, and various other law enforcement agencies.

With kind personal regards, I am

Sincerely yours,
JAMES W. POWELL
Director

Enc.

JWP:ew

1 July 1955 to 1 July 1956

The following shows source of requests and types of work for the Fiscal Year 1955-1956:

	Sheriffs' Depts.	Police Depts.	High-way Patrol	Solicitors	Judges	Executive Dept.	Coroners	Misc.	Totals
Assaults.....	17	3	—	1	—	—	—	1	22
Burglary.....	456	130	—	—	—	4	—	1	591
Forgery.....	77	39	2	9	1	11	—	1	140
Homicide.....	57	12	1	8	—	1	2	—	81
Larceny.....	71	32	7	1	1	5	—	—	117
Robbery.....	132	51	1	—	—	1	—	—	185
Sex Offense.....	15	8	—	2	—	3	—	—	28
Miscellaneous.....	76	67	5	16	2	85	—	19	270
Technical.....	618	326	12	9	—	99	2	125	1,191
TOTALS.....	1,519	668	28	46	4	209	4	147	2,625

The following statement shows the source of requests and types of work performed by the Technical Division during the Fiscal Year 1955-1956:

	Sheriffs' Depts.	Police Depts.	High-way Patrol	Solicitors	Judges	Executive Dept.	Coroners	Misc.	Totals
Fingerprint Examinations.....	23,504	14,789	280	—	—	—	—	—	38,573
Firearms Examinations.....	453	245	—	—	—	25	—	145	868
Document Examinations.....	976	1,154	—	34	3	3,364	—	424	5,955
Chemical Lab Examinations.....	755	693	41	—	—	976	379	255	3,099
Photographs Printed.....	7,810	6,702	—	—	—	3,543	—	—	18,055
Phychograph Tests.....	151	62	3	1	—	1	—	—	218
TOTALS.....	33,649	23,645	324	35	3	7,909	379	824	66,768

1 July 1954 to 1 July 1955

The following shows source of requests and types of work for the Fiscal Year 1954-1955:

	Sheriffs' Depts.	Police Depts.	High-way Patrol	Solicitors	Judges	Executive Dept.	Coroners	Misc.	Totals
Assaults.....	17	4	2	2	—	2	—	—	27
Burglary.....	728	235	2	—	—	4	—	1	970
Forgery.....	95	104	—	9	1	135	—	2	346
Homicide.....	67	14	1	17	—	—	8	—	107
Larceny.....	101	38	6	2	—	5	—	—	152
Robbery.....	29	12	—	—	—	1	—	—	42
Sex Offense.....	18	7	—	4	—	2	—	—	31
Miscellaneous.....	120	97	10	9	—	92	1	9	338
TOTALS.....	1,175	511	21	43	1	241	9	12	2,013

The following statement shows the sources of requests and types of work performed by the Technical Division during the Fiscal Year 1954-1955:

	Sheriffs' Depts.	Police Depts.	High-way Patrol	Solicitors	Judges	Executive Dept.	Coroners	Misc.	Totals
Fingerprint Examinations.....	5,019	3,982	250	—	—	—	—	503	9,754
Firearms Examinations.....	335	99	—	—	—	—	—	41	475
Document Examinations.....	640	916	—	310	—	875	—	211	2,952
Chemical Lab Examinations.....	58	46	—	—	—	—	1	—	105
Photographs Printed.....	4,521	2,863	85	65	—	1,750	10	352	9,646
Psychograph Tests.....	112	141	16	2	—	8	—	—	279
TOTALS.....	10,685	8,047	351	377	0	2,633	11	1,107	23,211

YEARLY REPORT

The following statement shows new and old cases investigated and closed for each month during the period from 1 July 1955 to 1 July 1956 and 1 July 1954 to 1 July 1955:

	1 July 1955 to 1 July 1956				1 July 1954 to 1 July 1955			
	NEW CASES		OLD CASES		NEW CASES		OLD CASES	
	Investigated	Closed	Investigated	Closed	Investigated	Closed	Investigated	Closed
July.....	161	84	56	33	167	72	78	39
August.....	184	121	103	24	145	72	134	47
September.....	176	89	76	15	190	99	92	30
October.....	179	104	131	66	127	40	130	46
November.....	239	184	144	68	141	56	98	33
December.....	263	56	115	41	212	94	161	77
January.....	314	260	108	28	213	100	129	45
February.....	268	188	139	40	167	85	150	41
March.....	217	173	67	19	208	100	152	43
April.....	204	158	123	22	149	62	113	30
May.....	217	168	98	26	137	58	117	34
June.....	203	142	116	79	157	66	493	426
TOTALS.....	2,625	1,727	1,276	461	2,013	904	1,847	891

SUMMARY REPORT

STATE WIDE
SUPERIOR COURT

Period Covered 1954

Offense	Convictions	Other Dispositions
Assault.....	313	148
Assault and battery.....	31	20
Assault with deadly weapon.....	730	266
Assault on female.....	273	109
Assault with intent to kill.....	258	124
Assault with intent to rape.....	40	35
Assault—secret.....	7	5
Drunk—drunk & disorderly.....	852	220
Possession—illegal whiskey.....	252	57
Possession for sale—sale.....	204	62
Manufacturing—possession of material for.....	37	13
Transportation.....	106	20
Violation liquor laws.....	377	166
Driving drunk.....	1,555	560
Reckless driving.....	617	244
Hit and run.....	106	50
Speeding.....	1,359	339
Auto license violations.....	634	85
Violation motor vehicle laws.....	642	228
Breaking and entering.....	381	124
and larceny.....	851	144
and receiving.....	534	81
Housebreaking.....	27	3
and larceny.....	97	12
and receiving.....	17	1
Storebreaking.....	28	0
and larceny.....	12	1
and receiving.....	127	22
Larceny.....	679	198
Larceny & receiving.....	196	91
Larceny from the person.....	66	35
Larceny by trick & device.....	1	0
Larceny of automobile.....	230	46
Temporary larceny.....	34	3
Murder—first degree.....	100	67
Murder—second degree.....	55	4
Manslaughter.....	178	114
Burglary—first degree.....	35	26
Burglary—second degree.....	9	0
Abandonment.....	39	38
Abduction.....	0	0
Affray.....	39	34
Arson.....	38	16
Bigamy.....	44	18
Bribery.....	1	8
Burning other than arson.....	5	10
Carrying concealed weapon.....	106	40
Contempt.....	5	1
Conspiracy.....	76	29

SUMMARY REPORT

STATE WIDE
SUPERIOR COURT

Period Covered 1954

Offense	Convictions	Other Dispositions
Cruelty to animals.....	7	5
14- Disorderly conduct.....	85	49
Disorderly house.....	9	7
Disposing of mortgaged property.....	32	20
Disturbing religious worship.....	5	0
Violation of election laws.....	2	0
4- Embezzlement.....	97	65
Escape.....	152	8
9- Failure to list tax.....	5	3
Food and drug laws.....	0	0
Fish and game laws.....	18	28
Forcible trespass.....	214	24
3- Forgery.....	838	83
8- Fornication and adultery.....	38	30
Gaming and lottery laws.....	38	21
Health laws.....	3	2
8- Incest.....	16	12
Injury to property.....	103	42
Municipal ordinances.....	79	61
11- Nonsupport.....	474	202
11- Nonsupport of illegitimate child.....	57	41
Nuisance.....	10	6
Official misconduct.....	1	0
4- Perjury.....	14	16
13- Prostitution.....	13	15
8- Rape.....	54	56
Receiving stolen goods.....	85	18
Removing crop.....	4	1
Resisting officer.....	86	36
7- Robbery.....	225	72
8- Seduction.....	3	10
Slander.....	5	2
Trespass.....	45	31
Vagrancy.....	9	22
4- Worthless check.....	290	77
False Pretense.....	82	41
8- Carnal knowledge, etc.....	22	15
Crime against nature.....	80	27
2- Slot machine laws.....	0	1
Kidnaping.....	12	9
Revenue act violations.....	7	0
Miscellaneous.....	160	82
TOTALS.....	15,882	5,157
GRAND TOTAL.....		21,039

SUMMARY REPORT

STATE WIDE
INFERIOR COURT

Period Covered 1954

Offense	Convictions	Other Dispositions
Assault.....	3,310	1,672
Assault and battery.....	480	193
1 Assault with deadly weapon.....	4,774	2,425
Assault on female.....	3,542	1,635
Assault with intent to kill.....	219	322
Assault with intent to rape.....	7	24
Assault—secret.....	3	14
14 Drunk—drunk & disorderly.....	33,606	2,006
Possession—illegal whiskey.....	3,566	566
13 Possession for sale—sale.....	1,168	412
Manufacturing—possession of material for.....	271	56
Transportation.....	392	128
Violation liquor laws.....	3,501	564
Driving drunk.....	7,743	1,984
Reckless driving.....	10,973	2,006
10 Hit and run.....	828	339
Speeding.....	70,048	2,708
Auto license violations.....	14,572	2,413
Violation motor vehicle laws.....	23,301	2,917
Breaking and entering.....	99	486
and larceny.....	71	314
and receiving.....	42	398
2 Housebreaking.....	5	10
and larceny.....	0	53
and receiving.....	4	59
Storebreaking.....	4	10
and larceny.....	3	171
and receiving.....	3	119
Larceny.....	2,564	1,305
Larceny & receiving.....	699	227
6 Larceny from the person.....	20	59
Larceny by trick & device.....	7	16
Larceny of automobile.....	83	288
Temporary larceny.....	137	62
5 Murder—first degree.....	5	60
Murder—second degree.....	1	4
Manslaughter.....	9	115
2 Burglary—first degree.....	9	61
Burglary—second degree.....	2	1
11 Abandonment.....	157	120
Abduction.....	2	14
14 Affray.....	1,508	384
Arson.....	21	22
11 Bigamy.....	6	50
Bribery.....	3	3
Burning other than arson.....	5	0
Carrying concealed weapon.....	1,003	194
Contempt.....	118	83
12 Conspiracy.....	9	68

SUMMARY REPORT

STATE WIDE
INFERIOR COURT

Period Covered 1954

Offense	Convictions	Other Dispositions
Cruelty to animals.....	53	32
14 Disorderly conduct.....	3,105	741
Disorderly house.....	102	52
Disposing of mortgaged property.....	195	126
Disturbing religious worship.....	10	5
Violation of election laws.....	0	0
4 Embezzlement.....	32	109
4 Escape.....	579	144
Failure to list tax.....	59	13
7 Food and drug laws.....	76	6
Fish and game laws.....	162	54
Forcible trespass.....	442	130
3 Forgery.....	106	535
8 Fornication and adultery.....	543	222
12 Gaming and lottery laws.....	1,298	188
Health laws.....	78	12
8 Incest.....	11	11
Injury to property.....	1,082	472
Municipal ordinances.....	8,649	1,396
11 Nonsupport.....	3,121	1,440
11 Nonsupport of illegitimate child.....	306	181
14 Nuisance.....	302	88
Official misconduct.....	98	0
4 Perjury.....	403	19
8 Prostitution.....	141	60
8 Rape.....	226	88
Receiving stolen goods.....	120	86
Removing crop.....	16	15
Resisting officer.....	796	161
7 Robbery.....	23	204
8 Seduction.....	2	8
Slander.....	1	23
Trespass.....	830	382
Vagrancy.....	627	329
5 Worthless check.....	2,078	678
5 False pretense.....	102	218
8 Carnal knowledge, etc.....	5	26
8 Crime against nature.....	0	67
12 Slot machine laws.....	0	0
Kidnaping.....	3	7
Revenue act violations.....	9	9
Miscellaneous.....	1,069	581
TOTALS.....	215,367	36,058
GRAND TOTAL.....		251,425

STATE WIDE CRIMINAL CONVICTIONS SUPERIOR COURT

Year 1955

Offense		White	Colored	Un-classified	Totals
Assaults.....	M	668	853	137	1,658
	F	31	87	8	126
Liquor violations.....	M	1,169	639	204	2,012
	F	76	189	38	303
Motor vehicle.....	M	4,245	932	304	5,481
	F	134	16	3	153
Breaking and entering.....	M	989	683	171	1,843
	F	15	4	1	20
Larceny.....	M	763	380	100	1,243
	F	16	36	0	52
Arson—burning other than arson.....	M	35	15	3	53
	F	2	5	0	7
Murder—1st and 2nd degree.....	M	41	104	13	158
	F	7	10	1	18
Manslaughter.....	M	67	74	8	149
	F	4	16	3	23
Burglary—1st and 2nd degree.....	M	16	32	9	57
	F	0	2	0	2
Abandonment—Bigamy nonsupport— nonsup illegitimate child.....	M	388	181	51	620
	F	16	6	2	24
Fornication—adult incest—prostitution— rape—seduction—carnal knowledge— crime against nature—disorderly house.....	M	146	64	10	220
	F	25	17	1	43
Abduction.....	M	0	0	0	0
	F	1	0	0	1
Affray.....	M	30	16	4	50
	F	0	1	0	1
Bribery.....	M	1	0	0	1
	F	0	0	0	0
Carrying concealed weapon.....	M	22	33	12	67
	F	2	1	0	3
Contempt.....	M	1	0	0	1
	F	0	0	0	0
Conspiracy.....	M	23	5	28	56
	F	3	0	14	17
Cruelty to animals.....	M	7	0	0	7
	F	0	0	0	0
Disorderly conduct.....	M	53	27	8	88
	F	3	6	2	11
Embezzlement.....	M	59	24	6	89
	F	2	0	0	2
Escape.....	M	182	29	28	239
	F	2	0	0	2
Fish and game laws.....	M	28	0	0	28
	F	0	0	0	0
Forcible trespass.....	M	131	58	16	205
	F	5	5	1	11
Forgery.....	M	503	241	126	870
	F	85	34	5	124

STATE WIDE CRIMINAL CONVICTIONS SUPERIOR COURT

Year 1955

Offense		White	Colored	Un-classified	Totals
Gamming and lottery.....	M	12	15	5	32
	F	0	3	0	3
Health laws.....	M	3	1	1	5
	F	0	0	0	0
Injury to property.....	M	51	27	5	83
	F	7	4	0	11
Municipal ordinances.....	M	76	13	3	92
	F	2	4	0	6
Nuisance.....	M	8	2	0	10
	F	1	0	0	1
Official misconduct.....	M	12	5	2	19
	F	2	0	0	2
Perjury.....	M	0	0	0	0
	F	0	0	0	0
Receiving stolen goods.....	M	52	40	5	97
	F	4	2	0	6
Resisting Officer.....	M	46	25	9	80
	F	0	4	1	5
Robbery.....	M	127	64	0	191
	F	8	1	17	26
Slander.....	M	0	0	0	0
	F	0	0	0	0
Trespass.....	M	26	14	1	41
	F	1	0	0	1
Vagrancy.....	M	7	3	0	10
	F	2	0	1	3
Worthless checks.....	M	175	40	52	267
	F	16	8	3	27
False pretense.....	M	67	21	0	88
	F	8	8	8	24
Slot machine laws.....	M	0	0	0	0
	F	0	0	0	0
Kidnapping.....	M	1	1	1	3
	F	0	0	0	0
Revenue act violation.....	M	0	0	0	0
	F	0	0	0	0
Narcotic laws.....	M	35	5	1	41
	F	20	0	0	20
Miscellaneous.....	M	100	47	26	173
	F	11	13	3	27
TOTALS.....		10,876	5,195	1,461	17,532

TOTAL CONVICTIONS.....

TOTAL CASES NOLPROSSED.....3,565

TOTAL CASES ACQUITTED.....1,464

OTHER DISPOSITIONS..... 667

TOTAL.....5,696

GRAND TOTAL..... 23,228

STATE WIDE CRIMINAL CONVICTIONS INFERIOR COURT

Year 1955

Offense		White	Colored	Un-classified	Totals
Assaults.....	M	3,440	6,415	888	10,743
	F	259	963	100	1,322
Liquor violations.....	M	24,043	15,317	2,816	42,176
	F	1,685	2,822	252	4,759
Motor vehicle.....	M	88,139	28,276	9,185	125,600
	F	7,027	1,302	519	8,848
Breaking and entering.....	M	109	99	154	362
	F	4	3	0	7
Larceny.....	M	1,191	1,459	291	2,941
	F	104	210	23	337
Arson—burning other than arson.....	M	6	2	2	10
	F	2	3	0	5
Murder—1st and 2nd degree.....	M	2	1	0	3
	F	2	1	0	3
Manslaughter.....	M	5	2	1	8
	F	1	2	0	3
Burglary—1st and 2nd degree.....	M	3	4	0	7
	F	0	0	0	0
Abandonment—bigamy nonsupport— nonsup illegitimate child.....	M	1,419	1,996	283	3,698
	F	37	98	14	149
Fornication—adult incest—prostitution— rape—seduction—carnal knowledge— crime against nature—disorderly house.....	M	92	135	33	260
	F	90	101	31	222
Abduction.....	M	2	4	0	6
	F	0	0	1	1
Affray.....	M	613	506	84	1,203
	F	55	189	20	264
Bribery.....	M	0	1	0	1
	F	0	0	0	0
Carrying concealed weapon.....	M	308	571	68	947
	F	9	35	5	49
Conspiracy.....	M	32	32	39	103
	F	3	4	0	7
Contempt.....	M	0	0	0	0
	F	0	0	0	0
Cruelty to animals.....	M	10	2	3	15
	F	0	0	0	0
Disorderly conduct.....	M	1,224	1,009	212	2,445
	F	232	422	34	688
Embezzlement.....	M	10	5	9	24
	F	2	1	0	3
Escape.....	M	270	131	85	486
	F	0	0	0	0
Fish and game laws.....	M	80	13	21	114
	F	1	1	1	3
Forcible trespass.....	M	180	166	27	373
	F	11	7	1	19
Forgery.....	M	22	12	22	56
	F	2	4	3	9

STATE WIDE CRIMINAL CONVICTIONS INFERIOR COURT

Year 1955

Offense		White	Colored	Un-classified	Totals
Gamming & Lottery.....	M	336	401	114	851
	F	3	34	12	49
Health laws.....	M	29	23	7	59
	F	3	12	1	16
Injury to property.....	M	586	492	96	1,174
	F	40	102	5	147
Municipal ordinances.....	M	3,425	1,230	724	5,379
	F	463	124	84	671
Nuisance.....	M	106	59	2	167
	F	26	40	2	68
Official misconduct.....	M	0	0	0	0
	F	0	0	0	0
Perjury.....	M	112	16	5	133
	F	21	1	0	22
Receiving stolen goods.....	M	29	35	2	66
	F	3	1	0	4
Resisting officer.....	M	385	259	56	700
	F	20	45	5	70
Robbery.....	M	10	11	2	23
	F	0	0	0	0
Slander.....	M	0	0	0	0
	F	1	0	0	1
Trespass.....	M	441	319	64	824
	F	33	40	4	77
Vagrancy.....	M	230	127	25	382
	F	78	27	8	113
Worthless checks.....	M	1,231	293	287	1,811
	F	143	24	14	181
False pretense.....	M	63	52	13	128
	F	6	5	2	13
Slot machine laws.....	M	0	0	0	0
	F	0	0	0	0
Kidnapping.....	M	0	0	0	0
	F	0	0	0	0
Revenue Act violation.....	M	0	0	0	0
	F	0	0	0	0
Narcotic laws.....	M	5	1	0	6
	F	0	0	0	0
Miscellaneous.....	M	525	313	158	996
	F	67	67	35	169

TOTAL CONVICTIONS.....2,225.79

TOTAL CASES NOLPROSSED.....14,301

TOTAL CASES ACQUITTED.....11,279

OTHER DISPOSITIONS.....12,550

TOTAL.....38,130

GRAND TOTAL.....260,705

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